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Director's Decisions for California

Homesteading

1956-1969

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0121927
5.04g

January 11, 1956

DECISION

Bruce William Morring — Homestead Entry

Manager's Decision of February 2, 1955, Modified Case Remanded

Mr. Morring has appealed from the Manager's decision of February 2, 1955, rejecting his homestead application under Section 2289, Revised Statutes, 43 U.S.C., Section 161. The land involved is the SW¼, Sec. 29, T. 6 S., R. 18 E., S.B.M. The rejection was based on an area field report of December 10, 1953, which classified the land as unfit for cultivation because of poor soil and adverse topographical features.

Appellant contends that since the field report, mentioned supra, the character of the land has changed due to the dams constructed on the Colorado River; that underground water can be reached at about 40 feet and the land is covered with heavy shrubs. Appellant insists a present re-examination of the land "would warrant a reversal" of the Manager's decision. No other evidence was submitted by the appellant.

The area field examination covers approximately 300,000 acres in the Chuckawalla Valley. A map with the report of examination shows areas recommended for allowance of desert land entries immediately adjacent to the subject land. The report, however, does not specifically describe the tract applied for by the appellant but describes only in general terms the features recommended for allowance and the remaining areas not recommended for allowance. Since there is no indication that the borderline between the two types of areas has been delineated with such great precision, there is a possibility of a shift of the line for some distance one way or the other.

In view of the proximity of the tract involved to the allowable land, reliance on the area report as a conclusive basis for classification of the particular tract involved seems inequitable.

On the basis of the evidence presented in the record there is insufficient evidence to substantiate the classification of the land as unsuitable for agricultural development for the reason that the record does not contain any evidence to show that the particular land involved has been individually examined and found to be unsuitable on the basis of such examination. Likewise, the evidence submitted by the appellant is also inconclusive.

The Department has held that applications for desert land entry should be remanded for further field examination where there is insufficient evidence in the record regarding the suitability of the land applied for for agricultural development. *Elmer Richard Wright et al.*, A-27020 et al., (February 28, 1955); *Charles C. Bogardus*, A-27219 (November 23, 1955).

Accordingly, the case is remanded to the Los Angeles Land Office for specific examination of the original tract sought by appellant and a reconsideration of his original application on the basis of such examination, if he presently desires such land. [1]

For the Director
A. H. [illegible]

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[1] The appellant filed an amended application for homestead entry on the NW¼ Sec. 32, T. 6 S., R. 18 E. This application was rejected by the Manager February 10, 1955, from which rejection no appeal has been submitted.

Distribution:

Appellant (Regular Mail)
Each AO
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0100653
5.04g

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January 12, 1956

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DECISION

William John Mauro

Homestead Entry

Decision of Manager Affirmed

Mr. Mauro has appealed from the Manager's decision of April 30, 1954, which rejected his homestead application because the land involved is "not suitable for economical development, due principally to the difficult water situation."

This appellant's unsubstantiated contention that farmers in the general area of the land involved have been successful despite the fact that "to obtain water in Antelope Valley one must go deep," and that a graduate in Agricultural Economics of the University of California assured him that the subject land is of good agricultural value and too "distant from urban areas for small homesite development in the near future."

The land sought, viz., SE$\frac{1}{4}$, Section 8, T. 9 N., R. 14 W., S.B.M., has been the subject of prior decisions and appeals rejecting public sale application Los Angeles 083005 and desert land application 076332, because the land is primarily suitable for classification under the Small Tract Act. See Noah Louis Bessimyer, A-25792, (February 28, 1950).

A re-examination of the land September 3, 1953 in the elevation range, 2700 to 2800 feet above sea level, shows no development of several 160 acre tracts which have been abandoned, leaving old well rigs and broken-down machinery. While the requirements for proof under the homestead law are less rigorous than those of the desert land act, it is estimated it would cost about $40,000 to put the land under irrigation.

The land is accessible from the Willow Springs paved road via a section line road on the east side of the section. Classification of the land, pursuant to many present applications for homesites under the Small Tract Act, will benefit a large group of people and the community.

The appellant has submitted no evidence or other acceptable data to support his contention supra. His general assertions do not meet the specific findings of the Manager's decision which was based upon field examination.

Accordingly, the decision of the Manager, Los Angeles Land Office, is affirmed.

Appellant has 30 days from receipt hereof to appeal to the Secretary of the Interior. If an appeal is filed, it must conform to the provisions of 43 CFR 221.75 and 221.76. See Circular No. 1818 attached.

For the Director

Attachment: Circular 1818

Distribution:

Appellant (Registered Mail)
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In reply refer to:

Sacramento 049601
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 8, 1956

Registered Mail
Return Receipt Requested

DECISION

Herman H. Moore	:	Homestead Entry

Decision of Manager Affirmed

Mr. Moore has appealed to this office from the decision of the Manager, Sacramento Land Office, dated March 5, 1955, rejecting his homestead application because the land involved had been classified as suitable for disposal under State Selection 048305, and also that the land was unsuitable for homestead entry.

Appellant admits he does not intend to cultivate the land but desires it for a Christmas tree ranch.

A previous homestead application for the same land, 047459, of Rudolph Errol Wright, was rejected, affirmed on appeal, because the land was unsuitable for homestead agricultural purposes.

Although appellant is entitled to maximum veteran's credit, he is required by the Act of June 18, 1954, to cultivate 1/8 of his entry, since his application was filed January 31, 1955.

Cultivation must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage of a crop other than native grasses. 43 CFR 166.23(a).

The growing of Christmas trees cannot be considered as cultivation, under the homestead law, and for this reason alone the application could have properly been rejected.

However, other reasons also exist for sustaining the Manager's decision rejecting this homestead application.

In this instance, the lands involved were withdrawn under Section 7 of the Taylor Grazing Act (43 U.S.C., Sec. 315f), and were not subject to homestead entry unless so classified. A prior application filed April 26, 1954, for State Selection 048305 for the same lands was, under the aforesaid act, classified as suitable for public sale or State selection.

The Department has held that where a State seeks to obtain a tract of public land as an indemnity school selection and a private person seeks to obtain the same land for homestead entry, the State's selection should ordinarily receive preferential consideration. State of California - Joseph L. Freeman, Sr., A-26255 (July 25, 1952).

Moreover, under the policy of the Bureau where the State selection was filed prior to the homestead application, as in this case, and the lands may be classified for either purpose, the State selection would ordinarily be approved. Hence the Manager's decision is affirmed.

This decision is subject for a period of 30 days from receipt hereof to the right of appeal to the Secretary of the Interior. If an appeal is filed, it must conform to the provisions of 43 CFR 221.75 and 221.76. See Circular No. 1818, attached.

For the Director:

Attachment

Distribution:

Mr. Herman H. Moore (Registered Mail)
Hon. Clair Engle (Member of Congress)
Each AO (1)
Each SO (3)
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In reply refer to:

BLM 035653 (La.)
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 8, 1956

Registered Mail
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DECISION

Paul Royer	: : :	Homestead Application

Decision of Chief, Lands Unit Adjudication
Section Affirmed

By a decision of June 16, 1954, the Chief, Lands Unit Adjudication Section of the Eastern States Office, rejected the homestead application BLM 035653 (La.) of Mr. Paul Rover. The rejection was based on the fact that the subject land was wet and marshy, which renders it unfit for agriculture. The primary use was stated to be timber production and grazing.

Mr. Royer states in his appeal that this land, the NE¼NW¼, Sec. 3, T. 8 S., R. 11 W., La. Mer., Louisiana, contains 15 acres of farming land. He would graze cattle and hogs on the rest. His appeal contains the signatures of 11 witnesses who have looked at the land, but there is no statement that they concur with the appellant's findings.

It is apparent from the record that the lands are unsuitable for agriculture. Data furnished by the County Agent and a Conservationist of the U. S. Department of Agriculture Soil Conservation Service indicated that a farm on this type of land, which is wet and marshy and which contains soil with a sandy surface and a deep, light, sticky clay subsoil, must contain 300 to 320 acres, in order to be a going unit.

This 40-acre tract is far from sufficient as a farm unit. It is best suited for the production of timber and for grazing.

Under the terms of Section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), land must be classified as being primarily valuable for the production of agricultural crops in order to be disposed of under the homestead law. As is shown above, the subject lands are not primarily valuable for the production of agricultural crops. The rejection of the homestead application is proper.

This decision does not prejudice the right of the appellant to bid upon this land at public sale.

The decision of the Chief is affirmed.

This decision is subject to the right of appeal to the Secretary of the Interior for 30 days from the receipt of same. If an appeal is filed, it must conform to the provisions of 43 CFR 221.75 and 221.76. See Circular 1818, attached.

For the Director:

Attachment

Distribution:
Mr. Paul Royer (Registered Mail)
Each AO (1)
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0106960
5.04g

February 13, 1956

DECISION

Manford Elmo Wilson — Homestead

Manager's Decision Reversed

By decision of April 30, 1954, the Manager, Land Office, Los Angeles, California, rejected homestead application Los Angeles 0106960, of Manford Elmo Wilson. The application embraces the NW$\frac{1}{4}$ sec. 10, T. 11 N., R. 8 W., S.B.M., California.

On May 27, 1954, the applicant filed an appeal from the rejection of his application in which he questions the soundness of the reasons for the rejection.

The Manager based the rejection on a field report and in his decision stated that the land applied for is situated in an area where there has been no agricultural development, that there is no satisfactory dependable source of water in a sufficient amount to irrigate the land and that the underground water is so deep and so inadequate that no agricultural development is possible.

The application was again referred to the field examiner for a supplemental report.

In the supplemental field report it is disclosed that three water wells have been drilled and completed within 200 feet of the land embraced in the homestead application. These wells were drilled to a depth of 400 to 450 feet and produced, on test, 2400 gallons per minute. The wells were cased to 300 feet and the static level is from 150 to 160 feet and the draw down was 10 feet at the time of the test.

The supplemental report indicates that the soils embraced in this application are suitable for agricultural use. The United States Soil Conservation Service, Irrigation Division, has stated that the average water requirements for sprinkler irrigation would be 10 gallons per minute per acre which would indicate that the applicant would need production of 200 gallons per minute to meet the minimum requirements for final proof.

Under section 296.4 of 43 CFR, it is provided that public lands which are desert in character within the meaning of sections 2 and 3 of the desert land law (Act of March 3, 1877, 19 Stat. 377), and are subject to classification under section 7 of the Taylor Grazing Act may, on the filing of an application under the general homestead laws, be classified for entry under those laws, provided the applicant makes a satisfactory showing that the land is susceptible of successful cultivation by irrigation and that the cultivation requirements of the homestead laws will be met. The applicant in such a case will be required to furnish satisfactory evidence of a water right and plans of irrigation. The available water supply, and the plans of irrigation, however, need be sufficient only to enable the applicant to meet the cultivation requirements of the homestead laws. Under section 166.23 of 43 CFR it is provided that during the second year not less than one sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. Thus, under a homestead entry of 160 acres, cultivation of only 20 acres would be required in order to make final proof.

In the case of application Los Angeles 0106960, it has been shown that there is more than a sufficient water supply to irrigate enough of the land in the application to make final proof and that since the land has been classified as agricultural in character, the decision of the Manager, of April 30, 1954, is reversed.

The case record is remanded to the Manager with instructions to call upon the applicant to furnish plans of irrigation in accordance with the provisions of 43 CFR, sec. 296.4. If such evidence is filed and is found to be satisfactory, the Manager will allow the application.

For the Director

A.H. [illegible]

Distribution:

Mr. Manford Elmo Wilson (Regular Mail)
Hon. Harlan Hagen
Each AO
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LO (Los Angeles) with case record of Los Angeles 0106960

In reply refer to:

Los Angeles 0115905
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
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DECISION

Paully Cedar Haynes : Homestead Application

Manager's Decision Affirmed

Paully Cedar Haynes has appealed to the Director from the Manager's decision of September 8, 1954, which rejected her homestead application Los Angeles 0115905 because the lands applied for were withdrawn under First Form Reclamation withdrawal under the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), and are not subject to disposition under the public land laws.

The records show the lands applied for were included in a first form withdrawal on February 6, 1903, for the Yuma Project, pursuant to Section 3 of the Reclamation Act of June 17, 1902, *supra*. The lands sought are still within the reclamation withdrawl which has not been revoked.

The regulations of the Department, 43 CFR 230.12, provide that lands embraced in a first form withdrawal cannot be "entered, selected, or located in any manner so long as they remain so withdrawn" and applications for such lands must be rejected. 1/

The appellant contends that she is claiming these /lands/ under "my duly vested Indian Rights to so select under a grant allotment U. R. Number as I am an Osage Indian * * * ." She further states that she "will move upon the afore so described lands claiming same under duly vested Indian Rights, * * * ."

The appellant's contention overlooks the fact that all vacant, unreserved, and unappropriated public lands in California were withdrawn from settlement and entry by Executive Order 6910 of November 26, 1934 (43 CFR 1949 ed., 297.11). Section 7 of the

---

1/ Departmental decision A-27235, Alma Everett Morris, Jr., et al, December 12, 1955.

Taylor Grazing Act, as amended (43 U.S.C., 1952 ed., sec. 315f), authorizes the Secretary of the Interior, in his discretion, to examine and classify any lands withdrawn or reserved by Executive Order 6910 and to open such lands to entry, selection, or location in accordance with such classification under the applicable land laws. Consequently, the regulations promulgated by the Secretary of the Interior on Indian allotments have cautioned that public land withdrawn by Executive Order 6910 "is not subject to settlement under Section 4 of the General Allotment Act of February 8, 1877, as amended, until such settlement has been authorized by classification" under Section 7 of the Taylor Grazing Act (43 CFR, Part 176 f.n.1). In addition, the regulations of the Department issued pursuant to Section 7 provide that:

> "The filing of an application which cannot be allowed unless the land is first classified does not give the applicant the right to occupy or settle upon the land. The applicant shall be entitled to the possession and use of the land only after his entry, selection, or location has been allowed, or a lease has been issued. Settlement on the land prior to that time constitutes a trespass." (43 CFR 296.5). 2/

The appellant stated that she had filed a request for the restoration of this land from the Reclamation Withdrawal. In the event the lands are restored from the Reclamation Withdrawal, they would be subject to the preference right of veterans to apply for the lands pursuant to the provisions of Section 4 of the Act of September 27, 1944, as amended (43 U.S.C., 1952 ed., Supp. II, sec. 282). In this connection it should be observed that, if the appellant is a veteran she will not be entitled to preference over other qualified veterans, in the event of a restoration, merely because she requested a restoration of the land. There is no authority to be found in the 1944 act for granting such a preference. 1/

Accordingly, it is concluded that the lands are not subject to entry, selection or location while they are included in the Reclamation Withdrawal; if they should be restored from such withdrawal they would be subject to Executive Order 6910, *supra*, and would not be subject to disposition until classified as to their highest use value; and, further, they would be subject to the Veterans' Preference Act of September 27, 1944, *supra*. The Manager's decision of September 8, 1954, is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00

2/ Departmental decision A-27203, Alexander Bateman, et al., November 9, 1955.

filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34, inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

For the Director:

A. H. [illegible]

Attachment

DISTRIBUTION:

Miss Paully Cedar Haynes (Registered Mail)
Lands Staff Officer (1)
Appeals List No. 1
PAS

Los Angeles 0129710
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 27, 1956

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DECISION

Francis E. Burnett : Homestead

Manager's Decision Affirmed

This is an appeal to the Director of the Bureau of Land Management from the decision of the Manager, Land Office, Los Angeles, California, dated April 15, 1955, rejecting the homestead application of Mr. Francis E. Burnett on the ground that the land was withdrawn under a First Form Reclamation Withdrawal.

The land involved is Lots 3 and 6, Sec. 5, T. 13S., R. 16E., S,B,M, California. It was withdrawn under the First Form Reclamation Withdrawal Act of June 2, 1902, in connection with the Yuma Project.

Although the lands were later released from the withdrawal by Departmental Order of March 18, 1913, they were not actually restored to entry until July 13, 1956. 21 F.R. 5433, (July 20, 1956). The withdrawal, therefore, was still in effect when Mr. Burnett filed application on March 10, 1955.

The regulations of the Department, 43 CFR 230.12, provide that lands embraced in a first form withdrawal cannot "be entered, selected, or located in any manner so long as they remain so withdrawn, and all applications for such entries, selections, or locations presented after the date of such withdrawal should be rejected and denied."

The homestead application cannot be held in suspension until the withdrawal is revoked. Alma Everett Morris, Jr., A-27235 (December 12, 1955.)

For the reasons mentioned above, the Manager's decision in rejecting Mr. Burnett's application is affirmed.

The rejection of this application is without prejudice to the filing of a new application since, as stated above, the lands in question have been restored and are now open to the filing of applications, selections, and locations as of July 13, 1956. The order of restoration states that these lands are subject to the preference rights of veterans to apply for the lands pursuant to the act of September 27, 1944 (58 Stat. 747; 43 U.S.C. 279-284), as amended. The consideration given such preference right applications as to the hour and date of filing is explained in the order of restoration. See 21 F.R. 5433, (July 20, 1956).

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this Office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34, inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

For the Director:
G.H. Kerr

Attachment

DISTRIBUTION:

Mr. Francis E. Burnett (Registered Mail)
Mr. J. Edward Kehlow (Regular Mail)
Lands Staff Officer (1)
CCS
Appeals List No. 1

In reply refer to:

Los Angeles 0134861

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 2, 1956.

Registered Mail
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DECISION

Kenneth D. Tullis : Homestead Application

Decision of Manager Affirmed

Kenneth D. Tullis has appealed from the decision of the Manager of the Land Office, Los Angeles, California, dated February 24, 1956, rejecting his application, (Los Angeles 0134861), for a homestead entry, pursuant to Section 2289, revised statutes (43 U.S.C. Sec. 161). The application was rejected on the grounds that the land involved does not meet the qualifications for homestead entry as required by the homestead act. The land was classified as nonagricultural in character and unsuitable for homestead entry because the topography is too rough to permit successful irrigation and cultivation.

An approved classification report discloses that the land applied for is too rough and steep for agricultural purposes; that it is more suitable for the production of native grasses and forage plants than for the production of agricultural crops. A previous homestead application by Henry August Carbon, L.A. 071195, for the land involved was rejected on the basis of a classification report dated June 6, 1949 for these same reasons. A supplemental field report dated August 14, 1956, states that the condition of the land involved has not materially changed.

In his appeal the appellant disagrees with the classification of the land. However, he does not submit supported evidence to refute the findings of the classification report. Unsupported statements in contradiction of the classification are insufficient to overcome the positive findings of a classification report. Mary Refugio Jackson, et al. A-27236 (Feb. 29, 1956). The appellant also stated that hilly sections of the land could be graded in such manner as to allow successful irrigation and cultivation. However, he does not show proof that this could be done nor has he furnished sufficient evidence to show that it can be economically accomplished.

Where a classification under Section 7 of the Taylor Grazing Act (43 U.S.C. Section 315(f)) as amended is adverse to the applicant, the burden is upon the applicant, should he appeal the classification, to show by positive and substantial evidence that the adverse classification is erroneous. *Mary Refugio Jackson et al.*, supra.

All of the vacant, unreserved and unappropriated public land in the State of California was withdrawn from settlement, location, sale or entry, and reserved for classification by Executive Order 6910 (Nov. 26, 1934). Sec. 7 of the Taylor Grazing Act, as amended, (43 U.S.C., 1952 ed., Sec. 315(f)) authorizes the Secretary of the Interior in his discretion to examine and classify any lands withdrawn or reserved by Executive Order 6910 which are more valuable or suitable for the production of agricultural crops than for the production of forage or more valuable or suitable for purposes other than those provided in the act, and to open such lands to entry, selection, or location for disposal under the applicable land laws. Therefore, under the act, before an application for homestead entry on land which has been withdrawn by Executive Order 6910 may be allowed, the land sought must first be classified suitable for such entry. (43 CFR, Part 296). The determination as to under which of the public land laws a portion of the public domain should be disposed is therefore entirely within the discretion of the Secretary. *William John Mauro* A-27318 (July 13, 1956).

If the greater portion of the land sought has terrain too rough, slopes too steep and soils too shallow and rocky for crop production, does not have sufficient tillable acreage to meet the minimum cultivation requirements and is not a self-sufficient economical unit, it is proper to refuse to classify such land as suitable for homestead entry. *Waylan Eugene Kuykendall*, A-27143 (August 18, 1955).

In the present case it appears from the evidence presented in the record that the land is unsuitable for homestead entry because the topography is too rough and broken to permit successful irrigation and cultivation. Therefore, the Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34 inclusive and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

For the Director:

Attachment

DISTRIBUTION:
Kenneth Tullis (Registered Mail)
Lands Staff Officer (1)
Appeals List No. 1
IC

In reply refer to:

Los Angeles 0123909
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 2, 1956.

DECISION

Registered Mail
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Dorothy C. Heyl : Homestead Application

Manager's Decision Affirmed

Mrs. Dorothy C. Heyl, applicant under homestead application, Los Angeles 0123909, has appealed to the Director from the decision of the Manager, Land Office, Los Angeles, California, dated February 2, 1955, which rejected her application for the E$\frac{1}{2}$SW$\frac{1}{4}$, E$\frac{1}{2}$NW$\frac{1}{4}$, sec. 14, T. 6 S., R. 3 E., San Bernardino Meridian, California.

The rejection was based upon the fact that the land applied for is within the boundaries of the San Bernardino National Forest and is not subject to appropriation under the homestead laws.

The land applied for is within the boundaries of the San Bernardino National Forest, formerly the Cleveland National Forest, which was withdrawn from disposal except for rights of way by the Secretary of the Interior by Order 24367, dated March 2, 1909. National forest land is not subject to homestead entry unless, pursuant to the Act of June 11, 1906, the Secretary of Agriculture, subsequent to his determination that the land is chiefly valuable for agricultural purposes and not needed for public use, requests that it be opened for such entry. (43 CFR, Secs. 170.1 - 170.2). The Secretary of Agriculture has not made such request with respect to the land involved here. As a consequence, the Bureau of Land Management may not allow a homestead entry upon the land applied for and the rejection of the appellant's application was proper. Charles H. Simmons, A-26317 (January 8, 1952).

Accordingly, the Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this Office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34 inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

It is suggested that the appellant present her request for classification or review of the classification by the Secretary of Agriculture of the land sought to the Supervisor of the San Bernardino National Forest in which the land is located, stating the reasons for her belief that such land has not been properly classified. (43 CFR, Sec. 170.3).

For the Director:
A. H.

Attachment

Distribution:

Mrs. Dorothy C. Heyl (Registered Mail)
Appeals List No. 1
WHW

RULES OF PRACTICE * 11 Statement of Grounds

An appeal to the Director of the Bureau of Land Management will be dismissed where the appellant does not file a statement of reasons in support of his appeal within the time allowed by the Rules of Practice.

Robert W. Fink, Sacramento 051649. December 4, 1956.

In reply refer to:

Sacramento 051649
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 4, 1956.

Registered Mail
Return Receipt Requested

DECISION

:

:

Robert W. Fink : Enlarged Homestead

Appeal Dismissed

Mr. Robert W. Fink has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office at Sacramento, California, dated August 20, 1956, which rejected his enlarged homestead application.

The last paragraph of the Manager's decision is as follows:

> "This decision is subject to the right of appeal to the Director of the Bureau of Land Management. An appeal must be received in this office within 30 days from receipt thereof, accompanied by a $5.00 filing fee. Full compliance is required with 43 CFR Sections 221.1 to 221.5 inclusive, and to other pertinent sections of the Rules of Practice. See information sheet attached."

Section 221.1 provides for an appeal by any party adversely affected by a decision of an officer of the Bureau of Land Management to the Director. Section 221.2 provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes as follows:

> "* * * The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

Section 221.3 of the Rules of Practice is as follows:

"Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in Section 221.98 * * *"

Section 221.98 provides:

"Summary dismissal. An appeal to the Director * * * will be subject to summary dismissal by the officer to whom it is made for any of the following causes: (a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required; * * *"

Appellant filed his notice of appeal September 21, 1956. A statement of reasons should have been filed not later than October 22, 1956, 30 days after the notice of appeal was filed. No such statement has been received and no request has been made for an extension of time in which to file the statement of reasons as provided for by Section 221.97 of the Rules of Practice. The appeal is therefore dismissed.

For the Director:
A. H. [illegible]

Distribution:

Mr. Robert W. Fink (Registered Mail)
CCS
Appeals List No. 1

In reply refer to:

Sacramento 046481
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 15, 1956.
Registered Mail
Return Receipt Requested

DECISION

Harry R. Boys : Enlarged Homestead Application

Decision of Manager Modified; Case Remanded for Allowance of Application, As Amended.

Harry R. Boys has appealed to this office from a decision dated August 10, 1953 of the Manager of the Land Office, Sacramento, California, which rejected his enlarged homestead application Sacramento 046481 for the S½SW¼, S½SE¼, NE¼SE¼ sec. 25, N½NW¼, NW¼NE¼ sec. 36, T. 29 S., R. 13 E., M.D.M., California. The application was filed on September 24, 1952, and the action of the Manager was predicated upon a field report showing the lands applied for to be rough and brushy, that they do not contain sufficient level land for agricultural development, and that irrigation of the lands by a sprinkling system would not be feasible. The Manager stated the lands were classified as suitable for disposal through public sale, State selection, State or private exchange.

In his appeal Mr. Boys challenges the classification of the lands, stating in substance that of the total acreage involved, 320 acres, approximately 250 acres are rough lands the majority of which are covered with good grasses, that not over one-quarter of the tract is covered with brush, that 25 acres may be put into dry-farming, 20 acres thereof seeded to perennial grasses and six acres to alfalfa, and, further, that there is abundant water, with no lift higher than 15 feet.

On March 2, 1955, Mr. Boys filed a relinquishment of his application to the extent it involves the NE¼SE¼, S½SE¼, SE¼SW¼ sec. 25, T. 29 S., R. 13 E., M.D.M., California.

A report of supplemental field examination, approved May 22, 1956, discloses that natural precipitation is adequate to grow and mature field crops on the lands remaining in the application, namely, the SW¼SW¼ sec. 25 and the N½NW¼, NW¼NE¼ sec. 36, T. 29 S., R. 13 E., M.D.M., California. The report discloses also that there is sufficient arable land involved in the application, as amended, to allow compliance with the cultivation requirements of the enlarged homestead law. In view thereof, the previous classification of these lands is vacated and the lands are classified as chiefly valuable for the production of agricultural crops by dry-land farm methods. The decision of the Manager is modified, accordingly, and the case record will be remanded to the Land Office for allowance of the amended application.

No further consideration of the appeal is warranted as to the balance of the lands originally applied for, in view of the relinquishment filed by the applicant as to these lands.

This decision will become final 30 days from notice hereof upon the appellant. The right of appeal herefrom to the Secretary of the Interior within that period is allowed. If such appeal is taken it must be received in this Office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR secs. 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director

Attachment

Distribution:

Mr. Harry R. Boys (Registered Mail)
Hon. Craig Hosmer, House of Representatives
Lands Staff Officer
Appeals List No. 1
FP

In reply refer to:

Sacramento 051649
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Registered Mail
Return Receipt Requested

DECISION

January 4, 1957.

Robert W. Fink : Enlarged Homestead

Office Decision of December 4, 1956, Modified

The decision of this office in the case of Robert W. Fink, Sacramento 051649, (December 4, 1956) is modified to the extent that Mr. Fink is allowed the right of appeal to the Secretary of the Interior. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director:
John B. Piccolo

Attachment

DISTRIBUTION:

Mr. Robert W. Fink (Registered Mail)
Appeals List No. 1
CCB

In reply refer to:

Sacramento 051649
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

4

Registered Mail
Return Receipt Requested

DECISION

January 4, 1957.

Robert W. Fink	:	Enlarged Homestead

Office Decision of December 4, 1956, Modified

The decision of this office in the case of Robert W. Fink, Sacramento 051649, (December 4, 1956) is modified to the extent that Mr. Fink is allowed the right of appeal to the Secretary of the Interior. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director:
John B. Piccolo

Attachment

DISTRIBUTION:

Mr. Robert W. Fink (Registered Mail)
Appeals List No. 1
CCS

no appeal to Sec

reply refer to:

Los Angeles 0133849
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Wahington 25, D. C.

August 6, 1957

Registered Mail
Return Receipt Requested

DECISION

Homer G. Cain	:	Homestead

Appeal Dismissed

Homer G. Cain has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office at Los Angeles, California, dated September 5, 1956, which denied his application for reinstatement of his homestead application after it had been rejected and the case closed on May 2, 1956.

Appellant filed a homestead application on June 8, 1955, which was rejected because it described partial subdivisions and because the land applied for was included within a first form reclamation withdrawal under the act of June 17, 1902, and not subject to entry. Appellant amended his application and it was again rejected, this time on the ground that the description included two separate tracts and the land was within a first form withdrawal. After a further amendment of the description of the land, the application was rejected on August 31, 1955, solely because it was withdrawn from entry. Proof of service of this rejection was had by delivery of the Manager's decision by certified mail. No further amendment's to the application were received and no appeal was filed. The case was then closed on May 2, 1956.

Appellant's wife, on behalf of her husband, applied for reinstatement of his application and this was denied by the Manager in his decision of September 5, 1956. The decision stated that the lands were still within a first form reclamation withdrawal and not subject to disposition under the public land laws, that upon their restoration from the withdrawal they would have to be classified as to their highest use and that they would then be subject to the preference right of veterans. The last paragraph of the Manager's decision is as follows:

> "This decision is subject to the right of appeal to the Director of the Bureau of Land Management. An appeal must be received in this office (215 W. 7th Street, Los Angeles) within 30 days from receipt hereof, accompanied by a $5.00 filing fee, and must set forth in clear and concise language the grounds of the appeal. Full compliance is required with 43 CFR Sections 221.1 to 221.5, inclusive, and to the other pertinent sections of the Rules of Practice. See the information sheet attached. (Emphasis supplied).

Appellant filed a notice of appeal within the time allowed but since he did not submit payment of the $5.00 fee for the appeal as required, the Manager closed the case and notified appellant that his appeal could not be considered. The Rules of Practice, 43 CFR 221.2, which became effective May 1, 1956, provide that where a "notice of appeal....is not accompanied by the required filing fee (it) will not be considered and the case will be closed by the officer from whose decision the appeal is taken." The Manager's decision was sufficiently clear on the requirement of a $5.00 fee for the appeal. It appears from the record that the notice of appeal was personally delivered to the Land Office by appellant's wife but that she refused to pay the fee.

The case was properly closed by the Manager. The appeal will not be considered and is dismissed.

Edward Woozley
Director

DISTRIBUTION:
Homer G. Cain (Registered Mail)
Lands Staff Officer
Appeals List No. 1
CCS

In reply refer to:

Sacramento 047738
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 6, 1957

Certified Mail
Return Receipt Requested

DECISION

August Brenner : Homestead Application

Manager's Decision Affirmed

August Brenner has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated September 11, 1956, which rejected his 80-acre homestead application under the provisions of Section 2289, Revised Statutes, 43 U.S.C., 1952 ed., Section 161, et seq.

The application was rejected by the Manager for the reasons that:

(1) The land is too steep to permit agricultural development.
(2) There appears to be no permanent water on the land and development of a well sufficient for irrigation is very dubious due to the granite bedrock.
(3) No similar land in the vicinity was found under agricultural production.
(4) Cultivation would result in serious erosion.
(5) The highest form of use for the land is the production of forest products.
(6) The land has been recommended for retention in Federal ownership as part of the Central Sierra Management Unit.

At the time of application, appellant described the land sought as mostly rolling hills of fertile loam, and not rocky. He estimated that about 25 percent of the land could be "checked" (terraced), cultivated and irrigated, using a sprinkler system and putting in a well if necessary. In addition to using the land for a turkey ranch or to raise Angora goats, he stated he would have the usual domestic animals and chickens, and would like to put in an orchard. He also indicated that there is a spring on the land.

In appealing the Manager's decision, the appellant referred to his statement when making application for the land, to the effect that he desired to raise turkeys or Angora goats for breeding stock and for their wool. He asks what location and land would be better for that purpose than the land applied for, at any price, since he claims a good profit is made in raising turkeys on land valued at $1,000 per acre in locations not nearly as suitable for the purpose. Appellant mentions a Mr. Vincent in the locality, whom he states is doing very well with Angora goat breeding stock, and appellant thinks the land he seeks is just as well suited.

The appellant expressed the opinion that he could clear and cultivate at least half of the tract applied for, and contends that there is more than enough water for all needs. He states generally that there is a spring on the land which he has never seen dry on any of the visits he has made to the land each fall for the past seven years. the lowest level of the water having been about 2 second inches. According to the appellant, there is a deep ravine on the property as well as several small ones; also a second, small, spring which flows into the same ravine as the first one. Appellant suggests that a dam could be built at a convenient spot in the ravine to provide a large storage reservoir for a sprinkler system to irrigate pasture and that portion of cultivated land which is too steep to be irrigated in checks.

A field examination was made of the subject land on June 14, 1956. In the report of field examination the land is characterized as consisting of a rolling, more or less "park-like" stand of Ponderosa pine which is underlain by mountain misery. The topography for the most part is too steep to permit agricultural development, the land being of a type usually devoted to the production of forest products. The tract is not isolated, being joined on the east by another 80-acre tract of public domain. Although there are only 160 acres of land in this block, an improved dirt road which passes through the land provides public access and permits the land to be effectively managed for sustained yield forest production in conjunction with the large acreage of public domain timber in the area. The land is located at an altitude of approximately 3,750 feet. The annual precipitation, according to the field report, is about 50 inches, nearly all of the rains occurring in the period between October 15 and May 1. The report states that the frost-free period at this general elevation is approximately 200 days. The climatic conditions of the area are thus exceedingly favorable for the production of forest products.

The appellant states the land has scattered timber, recently cut over, and he refers to the "scrub, sparse forest products" contained on the land. The record shows, however, that a highly successful timber sale was recently concluded on this land, for which 750 ~~million~~ thousand board feet of mature Ponderosa pine was removed. Inasmuch as pine is appraised fairly high, it is estimated that the revenues derived from such sale amounted to between $20,000 and $25,000. The sale referred to was well conducted and left in excellent silvicultural condition an existing stand of conifers of commercial value. The land is being managed for sustained yield production of forest products by this Bureau as part of the Central Sierra Management Unit.

The field examination report further reveals that in a small portion of the east half of the tract it is "remotely possible" that limited agricultural production could be made from small grains and pasture. While it is indicated that this portion of the land is sufficiently level for agricultural use, its value would be only marginal and severe erosion would probably occur if the present ground cover were disturbed. The tract is described in the report as generally rolling, with grades from 10 percent up to 40 percent. No land of the type of the subject land was found to be under agricultural production in the vicinity, and in the surrounding area little agricultural use has been made of the common type soil constituting the subject land, a reddish clay derived in place by the decomposition of the granite parent material. The records of this Bureau disclose that the land under application was the subject of prior homestead entries, Sacramento 016707 and 08629, and both entries 1/ were relinquished. An orchard, as proposed by the appellant, would not be particularly adaptable to a steep hillside. Furthermore, intense cultivation of an orchard would add to the erosion problem.

Several small streams were found on the land, which were flowing limited amounts of water at the time the field examination was made. The permanence of this water appears dubious and insufficient to supply the large amount of water necessary for a project such as the storage reservoir for a sprinkler system envisioned by the appellant. Nor do the prospects appear good for developing a successful well for irrigation ~~purposed~~ Purposes in the granite bedrock underlying the land.

Whenever an officer of this Bureau classifies land applied for as unsuitable for the purpose for which application was made, the burden is placed on the applicant to show in what manner the Bureau's adverse classification was erroneous, and the classification will not be disturbed unless there is a showing of substantial error. *Harry E. Andersen*, A-27313 (June 14, 1956); *Gene Edwin Simpson*, A-27352 (August 13, 1956); *David J. Taylor*, A-27350, (August 13, 1956).

1/ These entries were allowed prior to the enactment of sec. 7 of the Taylor Grazing Act, 43 U.S.C., 1952 ed., sec. 315f, which authorizes the Secretary of the Interior to classify lands.

The Department has consistently held that applications for homestead entry are properly rejected where the land applied for is unsuitable for homestead entry. Walter E. Woods, A-27376 (February 12, 1957); Richard Wright, A-27136 (June 28, 1955); and where the land is more suitable for timber production. M. W. McKenzie, Jr., A-27149 (July 14, 1955); Vernon G. Golden, A-27248 (March 12, 1956). The Department has further held that an application for homestead entry is properly denied where the land is not suited for agricultural development because of steep slopes and erosion hazards and where, moreoever, the land is primarily valuable for timber production and is being managed for that purpose under a sustained yield program. Roscoe D. Schaffer, A-26934 (October 29, 1954); also where the land is more valuable for the production of timber than for the production of agricultural crops and where the land is so situated that it can be efficiently and economically administered as part of a timber management unit. Norbert R. Maus, A-26546 (January 15, 1953).

The Manager's decision is therefore affirmed. Mr. Brenner is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp. Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

John B Piccolo

Attachment

DISTRIBUTION

Mr. August Brenner (Certified Mail)
Lands Staff Officer (1)
Forestry Staff Officer
Appeals List No. 1
MAG

In reply refer to:

Los Angeles 0112320
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 27, 1957

Certified Mail
Return Receipt Requested

DECISION

August Gebert	:	Additional Homestead

Manager's Decision Affirmed

August Gebert has appealed to the Director of the Bureau of Land Management from a decision of the Manager of the Land Office, Los Angeles, California, dated April 19, 1956, rejecting his additional homestead application for certain land in California, under section 3 of the act of February 19, 1909 (35 Stat. 639; 43 U.S.C. 218), because the land was not suitable for entry under the homestead laws. The land was classified as non-agricultural in character and unsuitable for homestead entry.

According to the report of field examination the land lies approximately one and one-half miles north of Lakeside, California, and occupies the mountain ridges and the steep, rocky, brush covered portions of their slopes that extend down westerly into a small valley. Due to the rough and mountainous terrain, the greater portions of the lands are inaccessible. The soil is residual, derived in place from the underlying consolidated rock of igneous formation. It is for most part composed of shallow, gravelly sand loam and covered on the surface by huge boulders and outcroppings. In places the mountain slopes have only a thin mantle of soil or are practically barren rock. The vegetation is chaparral type, and its value for grazing purposes is negligible. All the land applied for is characterized by rough, rocky, and mountainous topography and considered unsuitable for agricultural entry under the homestead laws.

The applicant in his appeal does not deny that the land is rough, rocky, mountainous, and unsuitable for agriculture. The appellant states the land is good for pasture "when we have rain," and that there are ten acres on top of one of the hills which he can fence in and pasture a number of stock. Appellant refers to a neighboring farm which is "good farm land with plenty of water." Mr. Gebert states that in his own privately owned property he raises corn, potatoes, tress, and almost anything he wants to plant.

The appellant does not dispute the non-agricultural classification; in fact he admits that the land is rough, rocky, and mountainous. The field investigation indicates very definitely that the land has extremely limited agricultural possibilities and is unsuitable for homestead entry.

The record reveals no error in the classification nor has appellant submitted evidence that would justify overturning the classification. The Department has held that where the classification of land applied for under the homestead laws is adverse to the applicant, the burden is on him to show in what respect the adverse classification is in error. In the absence of an error which appears on the face of the record, the applicant must show by positive and substantial evidence that the land is suitable for agricultural use and that the adverse classification is erroneous. Harry E. Andersen, A-27313 (June 14, 1956). A mere statement by the applicant that the facts are not as stated in the classification is insufficient. Mary Refugio Jackson, et al., A-27236 (February 29, 1956). In the case of Vernon G. Golden, A-27248 (March 12, 1956), the Department stated that a homestead application is properly rejected where it appears that the land applied for is rough, steep land, having only marginal value for agriculture.

In view of the uncontroverted finding in the report of field examination that the land applied for is too rough, rocky, and mountainous for cultivation, appellant's application for an additional homestead entry was properly rejected. Accordingly, the Manager's decision is affirmed.

The appellant may apply for the sale of the land sought, under the Public Sale Law, 43 U.S.C., 1952 ed., sec. 1171. If such an application is filed, it will be considered on its merits.

Mr. August Gebert is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons doesnot accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director.

Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

John B. Piccolo

Attachment

DISTRIBUTION:

Mr. August Gebert (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

In reply refer to:
Los Angeles 0108118
0124248
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 6, 1957
Certified Mail
Return Receipt Requested

DECISION

Ruth Gary[1] :
Joseph L. Freeman, Sr. : Homestead applications

Decision of the Manager affirmed as to homestead application LA 0124248; Reversed in part as to homestead application LA 0108118

Ruth Gary has appealed to the Director, Bureau of Land Management from a decision of the Manager of the Land Office, Los Angeles, California, dated March 22, 1956, which rejected her homestead[2] application in part. The application covered an 80 acre tract described as the W½NE¼ Sec. 29, T. 7 N., R. 14 W., S.B.M., California and was rejected as to the NW¼NE¼ because that 40 acre subdivision was considered to be topographically unsuited for cultivation. Joseph L. Freeman, Sr., who filed application for additional homestead Los Angeles 0124248 pursuant to the Act of February 19, 1909[3] covering the same land, has appealed from a decision of the Manager of March 22, 1956, as modified[4] by the decision of January 4, 1957. The Freeman application was rejected because the SW¼NE¼ Sec. 29 conflicted with the prior allowable application of Ruth Gary and because the NW¼NE¼ Sec. 29 was not considered suitable for cultivation.

Both appellants allege on appeal that the NW¼NE¼ Sec. 29 is susceptible to cultivation and had been erroneously classified as not suitable for homestead entry.

1/ Also known as Ruth Gary Stanwyck

2/ Filed under R. S., Sec. 2289, 43 U.S.C., 1952 ed., sec. 161 et seq.

3/ 35 Stat. 639, 43 U.S.C., 1952 ed., Sec. 218

4/ The decision of January 4, 1957 merely corrected the description of the land.

Homestead application, Los Angeles 0108118 was filed by Ruth Gary on November 18, 1953 and Joseph L. Freeman, Sr. filed his homestead application, Los Angeles 0124248, on January 12, 1955.

Joseph L. Freeman, Sr. argues that his homestead application Los Angeles 0124248 deserves prior consideration over the application of Ruth Gary,Los Angeles 0108118 because of a previous homestead application Los Angeles 053190 filed by him on February 8, 1938 which was allowed in part and rejected as to the subject 80 acres. Joseph Luther Freeman, Sr., A-22510 (September 24, 1940). He alleges that the land had been classified as suitable for disposal under the homestead act prior to February 8, 1938. He argues further that:

> "According to the Tax Assessor's records this piece of land is entirely surrounded by privately owned land and as such is an isolated tract, not suitable for homestead entry.
>
> "There are no roads, public or private which gives access to it.
>
> "I have a patent on adjoining land namely NE$\frac{1}{4}$NW$\frac{1}{4}$, NW$\frac{1}{4}$NW$\frac{1}{4}$ of this Sec. 29 - and therefore have access to it."

The record shows that the land was examined on March 9, 1956 and by report of field examination of March 13, 1956 the field examiner states that the NW$\frac{1}{4}$NE$\frac{1}{4}$ Sec. 29 is too rough and hilly for cultivation. However, by an approved supplemental report of June 25, 1956 it was concluded that the original classification of the land as not susceptible to cultivation was in error and that a sufficient amount of the NW$\frac{1}{4}$NE$\frac{1}{4}$ Sec. 29 can be farmed to qualify for entry under the homestead laws. As previously indicated, the application of Ruth Gary, Los Angeles 0108118, was filed prior to the application of Joseph Freeman, Jr. Los Angeles 0124248. The allegations of appellants that the land is suitable for cultivation are consistent with information in the supplemental field report of June 25, 1956.

Mr. Freeman's claim that he has a prior right to the land by virtue of his prior application Los Angeles 053190 is without basis since that application was rejected by the Land Office Manager and the rejection was affirmed as to the W$\frac{1}{2}$NE$\frac{1}{4}$ Sec. 29 by decision of the Acting Assistant Secretary of the

Interior of September 24, 1940. Joseph Luther Freeman, Sr., A-22510 (September 24, 1940). Neither does reclassification of the land as suitable for homestead entry at this time afford Joseph L. Freeman, Jr. any legal or equitable claim to the land. Cf. Franklin P. Butts, A-26801 (February 5, 1954); I. W. Allen, A-25920 (December 7, 1950). The only conflict in issue at this time is between the two pending homestead applications of Ruth Gary Los Angeles 0108118 and Joseph L. Freeman, Sr. Los Angeles 0124248. Accordingly, Ruth Gary's application Los Angeles 0108118 is entitled to prior consideration, Cf. Trustees of Pueblo Water Works, John P. Elliott A-27371 (August 15, 1956).

The fact that the land consists of an isolated tract completely surrounded by privately owned land and not served by any public road is not persuasive evidence that the land cannot be occupied and developed in accordance with the provisions of the homestead laws by the prior homestead applicant, Ruth Gary.

After careful consideration of all of the evidence presented for the record including the representations of appellants it is concluded that the Manager erred in rejecting the homestead application LA 0108118 of Ruth Gary as to the NW$\frac{1}{4}$NE$\frac{1}{4}$ Sec. 29. Therefore the Manager's decision of March 22, 1956 is hereby reversed with respect to the NW$\frac{1}{4}$NE$\frac{1}{4}$ Sec. 29. As to the subsequent application, Los Angeles 0124248 of Joseph L. Freeman, Sr., the Manager's decision of March 22, 1956, as modified on January 4, 1957, was premature, since action on the junior application should have been suspended pending final adjudication on the prior application. See Ohmer v. Hensel 45 L. D. 557 (1916); Scribner v. Love, 53 I. D. 23 (1930), Trustees of Pueblo Water Works, supra. However, in the present posture of the cases, it is deemed appropriate to affirm the Manager's decision in Freeman's application, and that decision is affirmed as modified herein.

If all else be regular at the expiration of the appeal period in the absence of an appeal, the Gary application should be allowed.

Joseph L. Freeman, Sr. is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee.

The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Joseph L. Freeman, Sr. then he must serve a copy of all documents on the adverse party, Ruth Gary of 245 South Lucas Avenue, Los Angeles 26, California within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C. in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

For the Director:

A. H. Kerr

Attachment

DISTRIBUTION:

Ruth Gary (Certified mail)
Joseph L. Freeman, Sr. (Certified mail)
Lands Staff Officer 1
Appeals List No. 1
CFG

~~Vacated~~ appeal to Sec A-27613-12-24-58
reversed — see Supp A-27613 2-12-59

In Reply Refer To:
Sacramento 051738
049630
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 24, 1957

Certified Mail
Return Receipt Requested

DECISION

:

Paul E. Moyer : Enlarged Homestead Application

: Small Tract Application

Decision of the Manager Affirmed as to Homestead Application Sacramento 051738; Reversed as to Small Tract Application 049630

Paul E. Moyer has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated December 6, 1956, which rejected his homestead application Sacramento 051738. The homestead application as amended covers a 320 acre tract described as the E½NE¼, SW¼NE¼, SE¼NW¼, SE¼SW¼, SW¼SE¼, N½SE¼ Sec. 34, T. 42N., R. 12 E. M. D. M., California. The application was filed pursuant to the Act of February 19, 1909 as amended, 43 U.S.C., 1952 ed. sec. 218. The Manager's decision recited that: there is not sufficient precipitation and the growing season is too short for dry farming; rainfall averages only two inches during the extremes of the growing season; the minimum acreage necessary for an economic farm unit for a dry farm operation is about 600 acres; the only cultivation being carried on in the vicinity is in conjunction with cattle operations; and the field report recommended that the lands remain in public ownership under the administration of the Honey Lake Grazing District.

The appeal is also in response to another decision of the Manager of December 6, 1956, which rejected Mr. Moyer's small tract application Sacramento 049630. The small tract application is the prior application and was filed for a five acre tract described as the N½SE¼NE¼NE¼ Sec. 34 which is a part of the same land embraced in the homestead application Sacramento 051738. It was filed pursuant to the Act of June 1, 1938 (43 U.S.C., 1952 ed., Supp IV, sec. 682a) and was rejected because there is no evidence of demand for small tracts in the area in general and because disposal of an individual small tract in the midst of a large block of vacant public land would complicate the administration of the remaining public land in the area.

With respect to the homestead application Sacramento 051738 appellant contends in pertinent part that:

> (1) The growing season for crested wheat grass is from March 1 to October 1 or later and that the annual precipitation for that period over the past 30 years has been 5.75 inches rather than two inches during the growing season as stated in the Manager's decision. If the weather becomes too dry to mature small grain it can be cut and marketed or fed as hay.
>
> (2) The frost free period is of short duration, however there has been only one small grain failure in the past 7 years of continuous small grain cropping on dry land with the proper varieties of seed. He had early cabbage, endive, lettuce, red beets, green onions, radish, peas, spinach, swiss chard, turnips, parsley, kohlrabi, and kale available in market size by June 15, 1956 without supplemental irrigation. Appellant alleges further that in the past two years he has had 6 varieties of sweet corn mature between August 10 and 20 which is two weeks before killing frost for corn, and that he has produced prize winning crops. These he states were grown without frost protection except for hotcaps used on tomatoes, peppers, eggplants, cucumber, and squash, during the early period of growth.
> (Appellant submitted a photograph showing a garden plot in which tomatoes, cucumbers, and other market size produce is being grown along with a photograph of garden produce on exhibit at the Modoc County Fair).
>
> (3) Basing the decision on an economic unit as applied to a cattle operation is not applicable because cropping the land is more profitable.
>
> (4) Contrary to the examiner's assertion, there is evidence of very little summer fallowing practiced in the area and the publication, "Modoc County Crop and Livestock" issued by the Agricultural Commissioner bears out this fact.
>
> (5) He does not propose to summer fallow the land for dry land crop production but intends to drill a well from which he can irrigate 80 to 100 acres of the land and that he plans to put the balance of the land (about 220 acres) into permanent, improved pasture for sheep. With respect to the proposed irrigation he states as follows:

"We plan to put 10 acres of Surprise sandy silt loam into irrigated row crops. * * *

"Since we must drill a well for domestic use anyway, we plan to obtain a well of sufficient size to irrigate at least 10 acres. It is possible from available information that this well will be of sufficient capacity to irrigate 80 - 100 acres of the best soil when drilled. The well (12" bore) drilled on the Wistos property south of this public domain was drilled to a depth of 235 feet and tested out at 500 gallons / minute pumping at the 130 foot level. It has been continuously pumped at the rate of 350 gallons / minute all summer without any decrease in the permanent water level and is successfully irrigating 80 acres of the land."

(6) Retention of the land in the Honey Lake Grazing District is not in the public interest since the land as now used requires 10 acres per cow month and the 320 acres produces an annual gross income of $5.76 whereas, if developed as proposed by appellant the land will provide a labor income of $13,000 to $19,000 per annum and support an annual property tax of $112.80.

In support of the foregoing assertions appellant has submitted three letters in corroboration of his contentions that the land is suitable for agricultural purposes. These are as follows:

(1) M. E. Walls of Walls and Asher Realty Company states that:

"In our opinion there are approximately 100 acres of Suprise Valley loam on which practically any crop suitable to our climate can be raised - 90 acres suitable for dry land alfalfa - 130 acres suitable for crested wheat and alfalfa."

(2) Charles A. Fitzpatrick, Chairman, Modoc County Board of Supervisors, Alturas, California states:

"I am familiar with the land involved in this application. In line with obtaining the maximum benefits from this land, I am sure it would be of greater benefit to Modoc County to have this land developed by Mr. Moyer than to have it continued in its present use as part of the Honey Lake Grazing Unit.

"Due to the suitability of this land for more intensive management, it does not justify cow grazing on a sagebrush-grass basis as now administered * * *."

(3) John C. Hays, Modoc County Farm Adviser for 23 years with 4 years experience in the real estate business, states as follows:

> "This parcel of land is as good as any dry unimproved land I know of in the county. The land to be irrigated from wells is good deep Surprise loam, and the other, Pentz loam, he will dry farm to crested wheat grass and alfalfa for sheep pasture and hay.
>
> "The same kinds of soils are being successfully farmed by Mr. Joseph Wistos the Rancher adjacent on the south.
>
> "If these lands were farmed to vegetable, small fruits, poultry, and sheep as Mr. Moyer intends, in my opinion, the 320 acres would be an economical unit."

Appellant also submitted a reprint of an article taken from the January, 1950 issue of the "Western Livestock Journal". The article indicates that production on the Joe Wistos ranch in the vicinity of Alturas, California has been substantially increased by the establishment of domestic hay and pasture plants.

The record shows that the land was examined by a field examiner of this Bureau on June 19, 1956. The approved report of field examination indicates that the land is marginal for dry land crop production due to the low precipitation and because of the short and variable length of the growing season. The report states that it would be necessary to summer fallow the land each year in order to store up adequate moisture for the production of dry land crops and that the minimum acreage required for an economic farm operation under such circumstances is about 600 acres.

Appellant alleges on appeal that the classification as unsuitable for enlarged homestead entry is erroneous since he proposes to irrigate 80 to 100 acres of the land and to put the balance of it (approximately 220 acres) into alfalfa and crested wheat grass for the production of hay and pasture. Under this development plan he argues that the land has a high income capacity and does constitute an economic farm organization. It is also on the basis of the foregoing development plan that John C. Hays, corroborates the assertions of the appellant that development of the land would be an economic undertaking. It is evident from these assertions that parts of the land may be susceptible to reclamation by irrigation and that appellant apparently does not contemplate dry farming the land as intended by the Enlarged Homestead Act, 1/ 43 U.S.C., 1952 ed., sec. 218. The pertinent regulation under that act provides:

> "The terms 'arid' or 'nonirrigable' land, as used in these acts, are construed to mean land which, as a rule, lacks

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1/ The act provides in applicable portion that " * * no lands shall be subject to entry under the provisions of this Act until such lands shall have been designated by the Secretary of the Interior as not being, in his opinion, susceptible of successful irrigation at a reasonable cost from any known source of water supply."

> sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as dry farming, and for which there is no known source of water supply from which such land may be successfully irrigated at a reasonable cost." 43 CFR 167.1(b).

Appellant's allegations that he produced truck crops in market size by June 15, 1956 without supplemental irrigation are not persuasive evidence that these crops can be produced year in and year out without irrigation or that the land in issue comprises an economic operating unit. In fact it appears evident from his proposed plan for developing the land that he would irrigate for the production of this type of crop if his entry was allowed. It is not shown, however, that these truck crops were produced under dry farming and in the absence of any irrigation.

Neither is the argument that the land will produce dry land alfalfa and crested wheat grass pasture persuasive evidence that the land is suitable for entry under the Enlarged Homestead Act. The Departmental decision in the matter of Claude E. Crumb, 62 I.D. 99, 102 (1955) states:

> "There is nothing from which it can be inferred that the word 'cultivation' was employed in the act in any different sense from what is ordinarily understood by that term, namely, tillage, which as defined by Webster, is 'the operation, practice, or act of tilling or preparing land for seed, and keeping the ground in a state favorable for the growth of crops'."

The pertinent departmental regulation concerning cultivation requirements for homesteads provides that:

> "Cultivation of the land for a period of at least 2 years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage for a crop other than native grasses. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed) where that manner of cultivation is necessary or generally followed in the locality." 43 CFR 166.23(a).

It appears evident from the foregoing that the requirements under the provisions of the homestead laws contemplate more than merely converting all or a major part of the land to permanent dryland pasture.

In Max Behunin, A-26818 (December 18, 1953), the Department stated:

> "The appellant admits that the land is not suitable for row crops but desires to increase the forage thereon by irrigation.
>
> "Because the land is not more suitable for the production of crops than for the production of forage, it is proper to classify the land as unsuitable for disposal as a homestead entry. Fern C. Terney, A-25643 (April 4, 1949)."

In view of the showing made by the appellant regarding irrigation possibilities, this decision is without prejudice to the appellant's filing an ordinary homestead or desert land application as to the land he believes to be susceptible of irrigation upon making a proper showing as to the feasibility of irrigation.

With respect to small tract application Sacramento 049630 the report of field examination states that the land is topographically suited for small tract purposes and is accessible by road. However, the population in the area is stabilized, there are homesites available on private lands both within the Town of Alturas and in the outlying area, and the land sought lies 2½ miles from the nearest residential development. The report states that if the land is classified for small tract purposes it is unlikely that any further small tract applications would be filed and that allowance of the subject small tract application would merely chop up the public domain and make the remaining public land in the area more difficult to administer. In view of the foregoing it is concluded in the report that the small tract application should be rejected and the land retained in public ownership to be administered by the Honey Lake Grazing District.

Appellant alleges there are no comparable sites within three miles of Alturas. This assertion is concurred in by John C. Hays and M. E. Wells, of Alturas.

With respect to the factor of demand in the classification of lands for small tract purposes, the Department has held that land is properly classified for public sale where there is no apparent demand for the land for small tract purposes. Franklin P. Butts, A-26801 (February 5, 1954). However, in the subject case there is a small tract application for the land which is in fact evidence of demand for the land for the purpose sought and statements submitted in support of the appeal indicate that the land is desirable for homesite purposes.

The Department has also held that a small tract application for public land is properly rejected where the land is needed for stock driveway purposes to permit access to a livestock watering place William C. Parson, A-27089 (April 12, 1955); or where allowance of the application would seriously impede the use of a stock driveway

Leslie Ardell Silliman, et. al., A-27255, etc. (May 31, 1956). In these instances the home or cabin site development would seriously interfere with a particular management function and not merely occupy a portion of a larger area of vacant public land. The grazing use of public lands is generally not as high a use as the development of the public land under the provision of the Small Tract Act, 43 U.S.C., 1952 ed., Supp. IV, sec. 682a, and there is no evidence in the record of an exception in this instance.

After careful review of the evidence in the record we can find no reason for disturbing the decision of the Manager in the matter of enlarged homestead application Sacramento 051738. It is hereby affirmed. As to small tract application Sacramento 049630 it appears from the record that the land is suitable for homesite purposes and that disposal of the land under the Small Tract Act will not lead to private ownership of any resources required or needed for use by the general public. Manager's decision of December 6, 1956 which rejected the small tract application is hereby reversed. Land status records indicate the land is located within a grazing district. The grazing permittee or licensee should therefore be placed on notice that the land is under consideration for small tract classification and should be allowed 30 days from receipt of notice thereof to protest the proposed classification of the land as suitable for disposal in accordance with governing procedures.

Paul E. Moyer is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D.C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

John B. Piccolo

Attachment

DISTRIBUTION: Paul E. Moyer, General Delivery, Alturas,
California (Certified Mail)
Hon. Thomas H. Kuchel, United States Senate
Hon. Clair Engle, House of Representatives
Lands Staff Officer (1)
Appeals List No. 1
CFG

appeal to Sec,
affirmed A-27637 8-7-58

In reply refer to:

Los Angeles 0139558

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 26, 1957

Certified Mail
Return Receipt Requested

DECISION

Roy B. Stephenson : Homestead Application

Manager's Decision Affirmed

Roy B. Stephenson has appealed to the Director of the Bureau of Land Management from a decision of the Manager of the Land Office, Los Angeles, California, dated October 2, 1956 rejecting his homestead application embracing the SE$\frac{1}{4}$ of sec. 2, T. 9 N., R. 22 E., S.B.M., California. The application was rejected because the lands applied for are within a first form reclamation withdrawal, and also withdrawn under Power Site Classification No. 55 dated September 16, 1925.

The basis for the appeal is that Mr. Stephenson has lost by condemnation proceedings a considerable acreage of land. The appellant states that he made his homestead application for the purpose of regaining the land lost.

The records show that Power Site Classification No 55 was cancelled by Order of Cancellation No. 89 of September 29, 1947, and published in the Federal Register of October 18, 1947, at pages 6626-6627. However, the land embraced in Mr. Stephenson's application remained withdrawn under first form reclamation withdrawal of October 16, 1931 for use of the Bureau of Reclamation in connection with the Colorado River Storage Project, and is not subject to disposition under the public land laws.

The regulations of the Department, 43 CFR 230.12, provide that lands embraced in a first form withdrawal cannot be "entered, selected, or located in any manner so long as they remain so withdrawn" and applications for such lands must be rejected. Alma Everett Morris et al., A-27235 (December 12, 1955).

It is well settled that where land is not subject to entry or other disposition under the public land laws, an application to enter the land must be rejected. Claude Johnson, Jr., A-25791 (April 7, 1950); Elmer U. Wright, A-26975 (September 27, 1954). The Department has held that applications for withdrawn lands may not be held in suspense until the restoration of the land to entry and then considered as if filed at the instant that the land is restored to entry. Emily Juanita Miller, A-26966 (September 20, 1954); W. C. Dalzell, A-26346 (March 28, 1952); Lewis T. Cureton, A-25196 (March 8, 1948).

Furthermore, the applicant can receive no preference right for upon restoration to entry the land would be subject to veterans preference as provided by section 4 of the act of September 27, 1944, as amended (43 U.S.C., 1952 ed., sec. 282), which accords to honorably discharged veterans of World War II, the Korean Conflict, and others a preference right of 90 days to file applications under the homestead or desert land laws or under the Small Tract Act of June 1, 1938 (43 U.S.C., 1952 ed., sec. 682a), for land restored from a withdrawal.

A check of the records in the Bureau of Land Management reveals that by order of November 20, 1953, the Bureau of Reclamation released the land in question, and other lands, from withdrawal. However, the land is not subject to appropriation until it is restored to entry by the Bureau of Land Management. Furthermore, action with respect to any restorations of land along the lower Colorado River has been suspended until such time as present litigation between the States of California and Arizona over their rights to use the waters of the Colorado River has been settled.

Accordingly, the decision of the Manager is affirmed, but without prejudice to the right of appellant to file a new application when the lands are restored to entry.

Mr. Roy B. Stephenson is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp. Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

John B. Piccolo

Attachment

DISTRIBUTION
Mr. Roy B. Stephenson (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

reply refer to:

Sacramento 050503
050588
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 26, 1957

Certified Mail
Return Receipt Requested

DECISION

Billie Wayne Hodges : Homestead Application

Decision of Manager Affirmed

Billie Wayne Hodges has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated April 5, 1956, which rejected his homestead application embracing lot 8, sec. 14 and lots 1, 2, and 7, sec. 23, T. 30 S., R. 15 E., M.D.M., California. The decision of the Manager was based on a report of field examination which showed the land as consisting of a steep, rough, brush-covered ridge and which indicated cultivation on adjoining land less steep in character was discontinued because of severe gully erosion.

The appellant disputes that the land he seeks is steep, rough, brush-covered ridge land. He contends in his appeal that not less than 20 percent is capable of easy clearing and cultivation and that under proper land management practice the threat of erosion can be eliminated upon the subject land and adjoining land. When making application appellant indicated his intention was to use the land for grazing and agriculture. He expressed the opinion in his notice of appeal that about 80 acres could be cultivated and most of the remainder seeded for grazing. He stated that most of lot 2, sec. 23, containing 42.59 acres, is flat and this alone is sufficient to meet the cultivation requirements of the homestead laws. All the land, appellant alleges, is capable of being cleared and utilized for turkey ranching, an apple orchard, the growing of grain, and cattle grazing.

In substantiation of his assertions, appellant submitted letters from two persons:

(1) Mr. P. C. Berryman, Farm Advisor, County Director of Agriculture Extension, Cooperative Extension Work in Agriculture and Home Economics, State of California, states:

* * * * * * * * * * * * * * *

"It is my considered opinion that in the flatter area in the western portion of this piece of land in section 23, 25 to 30 acres could be safely farmed. Some clearing would have to be done and some pieces should have drainage terraces constructed. All tillage should be contour and gullies would have to be protected with brush wire dams or rock dams. In the more central part of the land described, another 8 to 10 acres could be farmed.

"The most valuable use of this land in my opinion would be for a turkey farm. The Pozo area is ideal for turkeys and this piece of land would provide ample range so that each year the turkeys could be rotated. There are a number of areas of good soil where brush could be removed and reseeded to perennial grasses and thus provide more pasture for a small herd of cows."

* * * * * * * * * * * * * * *

(2) Mr. H. Walsh of Nipomo, California, a cattle rancher and farmer, states:

* * * * * * * * * * * * * * *

"I believe that there is about 45 acres that can be put into cultivation, and altho there are several brush-covered ridges, the soil on them is good and once they are cleared and seeded that they would make excellent range, and that water can be found at a very shallow depth.

"With this amount of tillable land to grow grain on and the climate being dry, I believe that this property could also be made into a very productive turkey ranch. Some of the best turkey ranches in the state are in this area.

"Since it freezes 3 or 4 months out of the year in this area I believe apples could successfully be grown."

Use of portions of the land as a turkey farm as suggested by Mr. Berryman would not obviate compliance with the cultivation requirements of the homestead statute under which this application was filed.1/

1/ 43 U.S.C., 1952 ed., sec. 164; sec. 279, as amended by the Act of June 18, 1954 (68 Stat. 253); 43 CFR, 1954 ed., 166.23(a).

With reference to the statement by Mr. Walsh that the brush-covered ridges once they were cleared and seeded would make excellent range, it is pointed out that the homestead law contemplates actual breaking of the soil, the planting and sowing of seed, and tillage for an agricultural crop and does not contemplate the foraging of the plants by animals. Max Behunin, A-26818 (December 18, 1953). A Departmental decision in the case of Claude E. Crumb, 62 I.D. 99 (1955), states:

> "* * * There is nothing from which it can be inferred that the word 'cultivation' was employed in the act in any different sense from what is ordinarily understood by that term, namely, tillage, which as defined by Webster, is 'the operation, practice, or act of tilling or preparing land for seed, and keeping the ground in a state favorable for the growth of crops'."

The lands embraced in the appellant's application have been the subject of a field examination made on February 29, 1956, and two reports of field investigation which describe the topography of the subject lands as steeply rolling with slopes from 30 percent up to 60 percent. The reports reveal that while possibly a few very small portions of the lands could be cultivated, the total cultivable area would not exceed 10 acres, more or less evenly divided among the four subdivisions of the land. None of the subdivisions, the reports state, is susceptible of cultivation of one-eighth of its total area, the minimum necessary for compliance with the cultivation requirements of the homestead law. The lands generally, according to the field reports, are too rough and mountainous for cultivation. There is evidence that adjoining land on the south, where the slopes are considerably less steep, was placed in cultivation at one time but severe sheet and gully erosion forced the withdrawal of that land from production.

Brush on the land is mentioned by the appellant as being from 2 feet to 4 feet in height. Brush stands in this height range are usually indicative of poor sites, thin droughty soil, with underlying bedrock close to the surface.

Allegations by the appellant with respect to the character and potentialities of the lands and the supporting statements he submitted are at distinct variance with the information as developed by careful field examination of the lands. The fact that appellant failed to indicate his method of identifying the lands plus such factors as the absence of a spring represented by the appellant to lie in lot 8, sec. 14 and photographic evidence of record which confirms that lot 2, sec. 23 is rough and mountainous rather than mostly flat as contended by the appellant, lead to the belief that the appellant failed to accurately identify the lands. The lands embraced in the subject application are located in central San Luis Obispo County, about 20 miles east of

San Luis Obispo. There is no public access to the land and its present and potential use, according to the field examination report, is for limited grazing. Identification of the lands was made in the field examination with reference to an accepted corner position.

It has been consistently held by the Department that a homestead application is properly rejected where the land applied for cannot be used for raising agricultural crops and where the land is not suitable for agricultural development because of adverse topography. Esther N. Freese, A-26835 (March 26, 1954); Walter E. Woods, et al., A-27376 (February 12, 1957); Roscoe D. Schaffer, A-26934 (October 29, 1954).

In determining whether to classify land for homestead purposes the Secretary, or his delegated representative, must consider the facts disclosed by the reports and recommendations of the trained field personnel of the Bureau of Land Management. Where the reports and recommendations are adverse to classifying the land for agricultural development, and the basis of these reports and recommendations appears to be reasonable and proper, the Secretary will not classify the land for homestead purposes in the absence of a strong showing that some error has been committed in making the field examination, some vital information has been overlooked, or some other valid reason for overruling the adverse classification is presented. Gene Edwin Simpson, A-27352 (August 13, 1956); Walter E. Woods, et al., supra.

The record warrants the conclusion that the lack of agricultural possibilities of the subject lands make them unfit for homestead entry, and the further conclusion that the lands are suitable to be classified for disposal by public sale. The appellant asserts in effect that an appraisal of $10 per acre made by the Bureau recognizes the agricultural potential of the land. However, there are many factors entering into an appraisal and land may have a high value despite the lack of agricultural potential. Moreover, in Ernest C. De Ford, et al., A-26591 (February 6, 1953) the Department held that where an isolated tract of land which is of doubtful value for agricultural purposes can be sold at a price in excess of desert land, it is in the public interest to dispose of the land at a public sale. The decision of the Manager rejecting Mr. Hodges' application for homestead entry is therefore affirmed.

Subsequent to the filing of Mr. Hodges' homestead application, a public sale application, Sacramento 050588, was filed by Anson and Kate Lisk to purchase the lands embraced in the subject application under the public sale law, as amended (43 U.S.C., 1952 ed., sec. 1171). Mr. Hodges may, if he so desires, participate as a prospective purchaser in the sale of the lands at such time as they may be offered at public sale. No preference right to purchase the land will inure to Mr. Hodges by virtue of the filing of the homestead application.

Billie Wayne Hodges is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Billie Wayne Hodges then he must serve a copy of all documents on the adverse parties, Anson and Kate Lisk, R. F. D. Box 64, Santa Margarita, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

For the Director:
John B. Piccolo

Attachment

DISTRIBUTION:

Mr. Billie Wayne Hodges (Certified Mail)
Mr. and Mrs. Anson Lisk (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

Hd - 2

In reply refer to:

Los Angeles 0133864
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 8, 1958

Certified Mail
Return Receipt Requested

DECISION

Clayton L. McBride : Homestead

Manager's Decision Affirmed

Clayton L. McBride has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office, Los Angeles, California, which rejected his application for homestead entry on the E$\frac{1}{2}$SE$\frac{1}{4}$ sec. 35, T. 7 N., R. 11 W., S.B.M. The decision was rendered on January 21, 1957, and was amended on March 5, 1957, to show the adverse parties to be served by the appellant with notice of his appeal. The reason for the rejection was that the land has been classified as suitable for development under the provisions of the Small Tract Act.

All the vacant, unreserved, and unappropriated public land in California was withdrawn from settlement, location, sale or entry and reserved for classification by Executive Order No. 6910, dated November 26, 1934. By section 7 of the Taylor Grazing Act, as amended (43 U.S.C., 1952 ed., sec. 315(f)), the Secretary of the Interior (or his delegate) is authorized, in his discretion, to examine and classify such withdrawn land, and, when he finds that land to be more valuable or suitable for purposes other than those provided for by the Taylor Grazing Act, to restore such land to entry.

The filing of an application which can not be allowed unless the land is first classified does not give the applicant the right to occupy or settle upon the land. The applicant shall be entitled to the possession and use of the land only after his entry, selection, or location has been allowed, or a lease has been issued. 43 CFR 296.5.

The land here involved has been examined, and was, on March 1, 1955, classified as suitable for disposition as small tracts under the act of June 1, 1938, as amended (43 U.S.C., 1952 ed., sec. 682a).

Mr. McBride filed his application for homestead entry on June 28, 1955, after the land had already been classified for small tract disposal. An order issued under the Small Tract Act classifying land creates a segregation of the land for disposal under that act, except as provided in the order or in any modification or revision thereof. An application to make homestead entry will be rejected where the land is found to be more suitable for disposition under the terms of the Small Tract Act. *Joe L. Flaniken*, A-25863 (March 31, 1950). Indeed, an application for homestead entry on this identical tract has been rejected by the Department because of the small tract classification - and this in a case where the application had been made prior to the small tract classification. *Ray H. Brewer*, A-27022 (November 15, 1954).

Pursuant to the classification of this land as suitable for small tract development, applications to lease covering the entire area were filed. Leases have already been issued on at least 65 of the 80 acres on which homestead entry is sought. (Complete information concerning leases issued is given in Appendix "A".) These leases are contracts, and, having been regularly issued, may not be unilaterally cancelled. *Cf. McKay v. Wahlenmeier*, 226 F. 2d 35 (1955). Thus the land covered by the leases is now subject to the terms and conditions of the leases, and may not otherwise be disposed of so long as the leases exist.

The three five-acre tracts which have not been leased, although possibly suitable for agricultural development, can attain their highest use only by being developed as small tracts, in conjunction with the balance of the 80-acre tract. *Cf. Bentley M. McMullin*, A-26326 (February 20, 1952).

In his appeal, Mr. McBride makes certain arguments which are considered below. There seems to be some doubt as to the date on which the application was filed. This is because the application as originally submitted was for land not owned by the United States. The application was rejected on June 9, 1955, but the notice of rejection erroneously stated that "the E$\frac{1}{2}$SE$\frac{1}{4}$ is open". Thereafter Mr. McBride amended his application to apply for the area suggested. His amended application was received in the Land Office on June 28, 1955. The Department has repeatedly held that an amendment of an application is effective for purposes of priority from the date the amendment is received. But whether Mr. McBride's application be considered as filed on June 2, or June 28, is, in this case, unimportant, for both dates are subsequent to the classification of the land as suitable for small tract disposal, and in fact, the land is proper for disposal under the Small Tract Act, *supra*.

Mr. McBride also contends that since he applied for this land on the basis of the information contained in the decision of June 9, 1955, that the "E$\frac{1}{2}$SE$\frac{1}{4}$ is open", and further, since a field examiner who looked over the property indicated that the application for homestead entry would be approved, he is entitled to the tract of land. However, since the land has been classified as proper for small tract development, it can be disposed of only according to the provisions of the Small Tract Act, absent a revision of the classification. Representations that the land is suitable for classification for homestead entry do not prevent the Bureau from classifying the land for its highest use, i.e., small tract development. It is well settled that reliance by a private person on information furnished him by an employee of this Bureau can not operate to vest in such a person any right which is not authorized by law. Charles L. Day, A-26233 (August 31, 1951).

Accordingly, the decision of the Manager is affirmed.

Mr. McBride is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Mr. McBride, then he must serve a copy of all documents on the adverse parties listed in Appendix "A" within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

For the Director:

John B. Piccolo

Attachment

DISTRIBUTION:

Mr. Clayton L. McBride (Certified Mail)
Appendix "A" (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MG

Appendix "A"

Serial No.	Name and Address	Tract 1/	Date of Application	Date Lease Issued
0105970	Michael Signorelli 509 Hampton Road Burbank, California	S½SW¼NE¼SE¼	November 26, 1954	6/1/56
0139905	Robert B. Montine 3745 Falcon Avenue Long Beach, California	N½SW¼SE¼SE¼	April 4, 1956	6/1/56
0106187	Patrick T. Jones 1020 W. Washington Avenue Montebello, California	N½SE¼NE¼SE¼	July 17, 1953	9/1/56
0106070	Edward B. Velguth 2448 Barry Avenue Los Angeles 64, California	S½NW¼SE¼SE¼	July 6, 1956	8/1/56
0105977	Samuel Harwick 5321½ Hollywood Blvd. Los Angeles, California	S½SE¼SE¼SE¼	July 7, 1953	7/1/56
0105975	Mitchell E. Hilaiel 1602 Pico Boulevard Santa Monica, California	N½SW¼NE¼SE¼	July 7, 1953	6/1/56
0105958	Harry Davis 4527 Pixie Avenue Lakewood 11, California	S½NW¼NE¼SE¼	July 7, 1953	6/1/56
0105952	Katherine Latka 2672 Veteran Avenue West Los Angeles 64, Calif.	N½NW¼SE¼SE¼	July 6, 1953	6/1/56
0105940	Frank E. Rose, Jr. 1220 West Shorb Alhambra, California	S½NE¼SE¼SE¼	July 6, 1953	8/1/56
0105928	William P. Judd 7501 Quakertown Avenue Canoga Park, California	S½SE¼NE¼SE¼	July 3, 1953	6/1/56

(continued)

1/ All in Section 35, Township 7 North, Range 11 West, S.B.M.

Serial No.	Name and Address	Tract	Date of Application	Date Lease Issued
0104960	Mrs. Mary B. Luppi 3305 Wood Terrace Los Angeles 27, California	N½SE¼SE¼SE¼	June 1, 1953	7/1/56
0104778	John F. Conway 917 North Naomi Burbank, California	S½SW¼SE¼SE¼	May 25, 1953	6/1/56
0105918	Henry C. Burkhardt 2601 20th Street Santa Monica, California	N½NE¼SE¼SE¼	July 3, 1953	6/1/56
0104196	Franklin P. Butts 5033 South Van Ness Street Los Angeles, California	N½NE¼NE¼SE¼	May 4, 1953	*
0105764	Mrs. F. A. Johnson 4824 Hersholt Avenue Long Beach 11, California	S½NE¼NE¼SE¼	#	#
0105965	Mrs. Ethel J. Stanley 4934 Eldred Street Los Angeles 42, California	N½NW¼NE¼SE¼	#	#

* Lease not yet issued.

# This information is not immediately ascertainable.

29073

In reply refer to:

Los Angeles 0108427
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 22, 1958

Certified Mail
Return Receipt Requested

DECISION

R. Gary Stanwyck : Homestead Application

Decision of Manager Affirmed
Protest Dismissed

On March 26, 1954, R. Gary Stanwyck filed an appeal with the Manager of the Los Angeles, California, Land Office, from a decision rendered by that Office dated February 17, 1954, 1/ which rejected her homestead application Los Angeles 0108427, filed pursuant to section 2289, Revised Statutes, 43 U.S.C., 1952 ed., sec. 161. It was rejected because the land was embraced in a prior valid entry, Los Angeles 053190.

By her letter of appeal dated March 26, 1954, appellant asserts as follows:

> "Please be advised that I have not relinquished this claim and am herewith making an appeal for a review of facts. According to literature on homesteads and veterans privileges, Mr. Freeman does not have a valid claim."

The records show that final homestead proof was accepted, and patent No. 1152641 issued to Joseph Luther Freeman, Sr., entryman, under homestead entry Los Angeles 053190 on June 24, 1955, covering the land in issue before any action was taken on the appeal of R. Gary Stanwyck from the rejection of her homestead application Los Angeles 0108427. On July 23, 1957, appellant filed with the Director, a

---

1/ The decision also makes reference to homestead application Los Angeles 0108118 which will be made the subject of a separate decision.

letter styled "An amended protest" in which she asserts in pertinent part that:

> 1) Joseph Luther Freeman's application was rejected in its entirety by the Secretary of the Interior on September 24, 1940, because of rough topography and that the entryman did not appeal and thereby forfeited his claim.
>
> 2) Everyone in the neighborhood acquainted with the circumstances knows the entry is illegal and some say it is fraudulent since the case has been several times closed, reopened, extended, and no development has been made, and that according to the local grapevine Mr. Freeman has gotten the land without lifting a finger.
>
> 3) County Tax Assessor's "field books" indicate that Joseph Luther Freeman, Sr., now resides and has for several years resided in the village of Lake Hughes and that the record in the case shows that he hired a man to live on the land in a trailer. He cannot live in the designated shack because there is no water on the land.
>
> 4) When inspection tours are made the entryman stakes out a few horses, but that no one has any knowledge of Mr. Freeman actually residing on the land.

The case record in the matter of the homestead entry of Joseph Luther Freeman, Sr., Los Angeles 053190 shows that the entry was allowed December 9, 1941, covering the land sought described as the N½NW¼ sec. 29; NE¼NE¼ sec. 30, T. 7 N., R. 14 W., S.B.M., California. Appellant's homestead application Los Angeles 0108427 was filed December 1, 1953, and nearly 12 years after the prior entry had been allowed. Accordingly, the land was already appropriated under a prior claim and no longer available for entry, and the Manager had no alternative but to reject the subsequent filing. Only unappropriated public lands are subject to homestead entry. 43 U.S.C., 1952 ed., sec. 161; 43 CFR, 1949 ed., 166.2. Cf. Joyce A. Cabot, et al., 63 I.D. 122 (1956). It is unfortunate that the instant appeal was not considered prior to the patenting of the land in issue, but this breach of procedure did not deprive the appellant of any property rights but of a procedural privilege of having the merits of her case reviewed by the Director of the Bureau of Land Management and by the Secretary of the Interior. Appeals in cases such as the instant one are not matters of statutory right. Everett Elvin Tibbets, 61 I.D. 397, 401 (1954). Moreover, the record shows that the appellant under the name of Ruth Stanwyck (identified in the case record as one and the same person as R. Gary Stanwyck) filed homestead application Los Angeles 0108118 for an 80-acre tract of land described as the W½NE¼ sec. 29, T. 7 N., R. 14 W., S.B.M., California, on November 18, 1953, and fourteen days prior to the date of filing of her homestead application Los Angeles 0108427. Both applications were filed pursuant to section 2289, Revised Statutes, 43 U.S.C., 1952 ed., sec. 161, which, taken together, comprises a total of 200 acres. Therefore, the application Los Angeles 0108427 was subject to rejection on that basis alone, since the homestead law embodied in 43 U.S.C., 1952 ed., sec. 161, limits basic entries to 160 acres. See 43 CFR, 1954 ed., 166.3(b).

As to the protest against the entry of Joseph Luther Freeman, Sr., Los Angeles 053190, patent to the land has been issued. The effect of the issue of a patent is to transfer the legal title from the United States and to remove from the jurisdiction of this Department the inquiry into and consideration of all disputed questions of fact. Germania Iron Company v. United States, 165 U. S. 379, 383 (1897). The only possible action by the Department in such case is to consider whether it would merit a recommendation to the Attorney General that he commence an action to cancel the patent. Such action is justified only where the patent issued by mistake or as a result of fraud and where the Government has a direct interest or is under obligation to a member of the public involved. Everett Elvin Tibbets, supra. In the matter of the Santa Fe Pacific R. R. Co. v. Northern Pacific Ry. Co., 37 L. D. 669, 673 (1909), it was held that:

> " * * * the Supreme Court of the United States has decided that when it is apparent that the only purpose for bringing the suit to cancel the patent is to benefit one of two claimants to the land, and the Government has no interest in the matter, the suit must fail."

The appellant has advanced arguments to the effect that the County Tax Assessor's records indicate that the entryman has resided elsewhere and not upon the land sought, that persons acquainted with the circumstances know the entry to be illegal or fraudulent and that according to the local "grapevine" Mr. Freeman has gotten the land without lifting a finger. Such unsupported allegations are not persuasive evidence of fraud against the Government. Accordingly, the protest is without merit.

After careful consideration of all of the evidence of record, it is concluded that the decision of the Manager of February 17, 1954, was correct. It is therefore affirmed, and the protest is hereby dismissed.

R. Gary Stanwyck is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by R. Gary Stanwyck, then he must serve a copy of all documents on the adverse party, Joseph Luther Freeman, Sr., Lake Hughes, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Edward Woozley

Director

Attachment

DISTRIBUTION:

Mr. R. Gary Stanwyck (Certified Mail)
Mr. Joseph Luther Freeman, Sr. (Regular Mail)
Lands Staff Officer
Appeals List No. 1
CFG

In reply refer to:

Sacramento 010715
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 11, 1958

Certified Mail
Return Receipt Requested

DECISION

Dorothy L. Bradshaw, :
Protestant-Appellant :
: Stockraising Homestead
: Mineral Bond
L. W. Allred, :
Appellee :

Case Remanded

Mrs. Dorothy L. Bradshaw has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated June 8, 1955, dismissing a protest against the acceptance of a $1,000 bond filed by L. W. Allred, for the use and benefit of the owner of the surface estate. The bond was filed in purported compliance with section 9 of the Stockraising Homestead Act of December 29, 1916 (43 U.S.C. sec. 299), and the regulations issued thereunder, 43 CFR Part 168. That bond was to secure payment of such damages for the benefit of the surface owner as may be determined and fixed within the limitations of and in an action brought upon the bond.

The record discloses that two bonds in the penal sum of $1,000 each were originally filed with the Land Office on June 29, 1953. Each bond described the identical lands embracing 160 acres; one was for the benefit of the surface owner, Minnie Hoskins; the other for the surface owner, C. W. Bradshaw. No protest to the acceptability of the bond was filed by Hoskins. However, it appearing that the proper party to be served with a copy of the bond was the appellant herein, Allred procured and served upon her a new bond dated March 23, 1955. Within 30 days after a copy of the bond was served Mrs. Bradshaw protested. She alleged that the bond was not acceptable. Other than the general allegation of unacceptability no reasons were advanced by her to substantiate her contention.

The Manager, after noting that the protestant had listed no reasons to substantiate her contention that the bond was unacceptable stated as follows:

> "The bond filed by Mr. Allred states that his mining claim is in the subdivisions described in the first paragraph of this decision. The allegation in the bond is considered to be prima facie evidence that the claim is situated within the described area, and the regulations contained in Part 168, Title 43, Code of Federal Regulations, do not require that the mining locator furnish a metes and bounds description of the land in his claim. Therefore, * * * said bond will be approved in the absence of an appeal within 30 days of receipt of this decision".

In her appeal Mrs. Bradshaw contends that the bond is unacceptable because it does not indicate the exact location of the claim; that the bond is not of a sufficient amount to indemnify her for loss which may be sustained through interference with her water rights; and that the mining claim is invalid because of lack of a valid discovery. She states that a bond in the sum of $5,000 would be satisfactory.

The Stockraising Homestead Act, supra, provides for the creation and separation of the surface and mineral estates. Devearl W. Dimond, 62 I.D. 260. The entryman, even as he makes entry, agrees to the reservations required by statute. In material part that act provides as follows:

> "Sec. 299. Reservation of coal and mineral rights. All entries made and patents issued under the provisions of this division of this chapter shall be subject to and contain a reservation to the United States of all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same. * * * Any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented * * * for the purpose of prospecting * * * provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee, and shall be liable to and shall compensate the entryman or patentee for all damages * * * by reason of such prospecting. Any person who has acquired from the United States the coal or other mineral deposits in any such land, or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; second, upon payment of the damages to crops or other

> tangible improvements to the owner thereof, where agreement may be had as to the amount thereof; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure the payment of such damages to the crops or tangible improvements of the entryman or owner, as may be determined and fixed in an action brought upon the bond * * * against the principal and sureties thereon * * *".

A portion of the Agricultural Entry Act of July 17, 1914 (30 U.S.C. 122) is material to the discussion which hereafter follows. In pertinent part it is there provided that -

> "* * * Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the minerals therefrom, and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages.* * *".

The measure of damages established by the two above cited acts must be further construed together with section 2 of the Act of June 17, 1949 (30 U.S.C., 1952 ed., sec. 54) which enlarged the liability of the mineral claimant to include "any damage that may be caused to the value of the land for grazing by such prospecting for, mining, or removal of minerals". The enlarged liability created by this act must be considered in inquiring into the sufficiency of a bond filed for the benefit of the surface owner.

The statutes have placed a servitude upon the surface estate for the benefit of the mineral estate, subject to the obligation of the mineral entrant to pay the owner of the surface estate the damagds caused the servient estate. But the securing of the surface owner's consent, or in lieu thereof, posting a bond, is not a condition precedent to a location, but is incident only to the mining operations subsequent thereto. McMullin v Magnuson 78 Pac. 2d, 964.(1938) (Also see, Bourdieu v. Seaboard Oil Corporation of Delaware, 100 P. 2d, 528(1940), which includes a discussion of rights of entryman and mining claimants and the measures of damages.)

In Branch v. Brittan et al, 50 L.D. 510,514 (1924) it was said-

> "No provision is expressly made for the enforcement of the liability created for prospectors, and it becomes necessary to consider what was the apparent purpose of said provision. The distinction between the two classes of operations above shown, i.e., prospecting, for which no bond is required, and mining and removing, which requires a bond, is evidently that the former is a mere matter of possession for a specific purpose, an easement, whereas the latter is a situation in which certain rights and interests in the land are acquired, even as against the United States, and is of the permanent character of an entry * * *."
>
> "***In limiting the rights acquired under the stock-raising act so as to reserve the minerals in lands subject to disposal thereunder, and in reserving a right of location and entry for prospecting purposes, the Congress properly qualified this right by conferring upon the entryman a right to compensation for damage ***. Without such expressed right, entrymen under the stock raising act would have had no redress; for they could only make entry upon the conditions prescribed by the Congress, and, in view of the rights reserved to prospect for, mine, and remove the minerals, would have had no property right the invasion of which could give them a legal cause of action, so long as such injury as was inflicted was necessary to bona fide prospecting or mining operations.
>
> "In conferring upon the surface entrymen rights to compensation, causes of action were merely conferred. The jurisdiction in which the relief was to be enforced was not changed. That such was the case becomesapparent when it is considered that, as above shown, a mineral locator acquired no rights against the United States during the period of his prospecting operations, and had no application or entry of record, and there could, therefore, be no penalties exacted by the Land Department so as to enforce compensation of the entryman".

The Department is chargdd with the duty of seeing that the authority conferred by statute upon a mineral aspirant is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated and the rights of the public preserved, Cameron v. United States, 252 U.S. 450. Thus, it is clear, that if the mineral claimant has not acquired from the Government the mineral deposits in the lands in question, he is not entitled to have the bond approved. Joseph Brenner, Jr., et al., A-21582 (February 17, 1939). It also follows, if upon request for approval of a bond, it is determined that a mining claim is null and void the bond will not be approved, but where validity of a location is admitted or established, the bond, if in sufficient amount, should be approved. In those cases where the mineral claimant and the surface owner cannot arrive at a satisfactory understanding, the only recourse, it seems, would be in a court of competent jurisdiction. Cf. Branch v. Britton, supra. It seems that the court may, in certain circumstances, have jurisdiction to inquire into the validity of the claim. Kinney-Coastal Oil Co. v. Kieffer, 277 U.S. 488. (See also, Holbrook v. Continental Oil Company, 278P. 2d 798, concerning remedies available and measure of damages).

If Allred seeks entry to the Bradshaw lands for purposes of prospecting, he should gain the consent of Mrs. Bradshaw for such entry as a matter of courtesy. Forcible entry would constitute a trespass. The right of peaceable entry may be enforced by appropriate court remedies. Correlative thereto, the surface owner's remedies, should entry by the mineral claimant be for other than legitimate purposes, are vested in the appropriate courts. And although a prospector would be liable for certain damages that he may cause, there is no requirement that he post a bond prior to his entry for prospecting purposes; enforcement of such liability or for trespass would be in the local courts. Nor will the Bureau approve a bond, tendered for filing by a prospector, for in that case the Bureau would be placed in the position of condoning and being party to an act over which it has no jurisdiction. Joseph Brenner, Jr., supra.

On the other hand, if Allred is seeking reentry upon the lands for the purpose of working a valid mining claim which he had previously located, then, prior to operations he is properly required to furnish a bond in the sum of not less than $1,000 as required by 43 CFR Part 168. The sufficiency of the bond is a question of fact to be determined by the Manager. In case of court action to enforce liability on the bond, a review may be made to determine whether the bond is sufficient, or a court of competent jurisdiction may require the posting of bond in an increased amount prior to further operations.

The Manager, from that portion of his decision quoted above, appears to be of the opinion that the description of the land contained in the proffered bonds is sufficient. Whether or not the land description is sufficient must be determined in light of the following. The requirement of a bond is predicated upon a valid mining location. In the case of a lode location, the area and limits of the claim would be adequately described in the location notice and properly monumented on the ground. In that event the locale of operation would be satisfactorily pinpointed. If the location is a placer mine, then in that event each location would be readily ascertainable from the location notices and would be limited to a maximum of 20 acres for each claim. Although it does not appear that the question has been presented before, it seems that the mineral locator, even if he be the same locator of several claims on the same homestead entry, may be properly required to post bond for each and every mining location.

The appellant's allegation that Allred is not the owner of a valid mining claim is premature. The record fails to establish that he has any mining claim whatsoever. If it is later shown that he has located a claim, the proper recourse to determine its validity is the initiation of contest proceedings as provided in the rules of practice, 43 CFR 221.51, *et seq.*

The record is devoid of sufficient information upon which to render a decision concerning the necessity or sufficiency of the proffered bond. In the absence of an appeal from this decision, the case record will be remanded, through the Bureau's State Supervisor at Sacramento, California, for such further processing as is indicated by this decision.

Both Mrs. Bradshaw and Mr. Allred are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Mrs. Bradshaw then she must serve a copy of all documents on the adverse party, Mr. L. W. Allred, Star Route, Box 129, Mariposa, California; if appeal is taken by Mr. Allred, then he must serve a copy of all documents on the adverse party, Mrs. Dorothy L. Bradshaw, through her attorney, Mr. Oliver K. K. Nelson, 135 South Center Street, Turlock, California. The documents must be served within 15 days after filing same and the party appealing must send proof of that service, as required by 43 CFR 221.34 and 221.95 directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Mr. Oliver K. K. Nelson, Attorney for Appellant (Certified Mail)
Mrs. Dorothy L. Bradshaw (Regular Mail)
Mr. L. W. Allred (Certified Mail)
Lands Staff Officer
Minerals Staff Officer (5)
Mr. John Sieker, Forest Service, U. S. Dept. of Agriculture (8)
Appeals List No. 1
BF

In reply refer to:

Los Angeles 0136938
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 27, 1958

Certified Mail
Return Receipt Requested

DECISION

William M. Weiss : Homestead Application

Manager's Decision Affirmed

William M. Weiss has appealed to the Director from a decision of the Manager rejecting his application for homestead entry for the stated reason that the topography renders the land unfit for cultivation.

The question in issue is one of proper classification, and the appellant has submitted no positive evidence that the classification was in error.

The appellant's statement of reasons for his appeal has been carefully considered. It provides no basis for changing the classification of the land as not suitable for agricultural development. Andrew T. Johnson,* A-27305 (September 25, 1957).

Therefore, the decision of the Manager is affirmed.

Mr. William M. Weiss is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. William M. Weiss (Certified Mail)
Lands Staff Officer
Appeals List No. 1
AIR

* That decision affirmed the rejection of a homestead application for land in the same section on the basis, among others, that further agricultural development in that area through irrigation would result in an overdraft of the replenishable water supply reaching the basin.

35615

appeal to Sec
affirmed A-27798 12-23-58

In reply refer to:
Los Angeles 0140698
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 13, 1958

Certified Mail
Return Receipt Requested

DECISION

George Francis Walters : Homestead Application

Decision of Manager Affirmed

George Francis Walters has appealed to the Director from a decision of the Manager, rejecting his application for homestead entry for the stated reason that the land applied for was included in a first form reclamation withdrawal.

The Manager's action was proper, an application for withdrawn land cannot be held in suspense until the land is restored to entry, but must be rejected. Alma Everett Morris, Jr. et al, A-27235 (December 12, 1955).

The records of the Bureau of Land Management disclose that by order of November 20, 1953, the Bureau of Reclamation released the land under application and other lands, from withdrawal. However, the land is not subject to appropriation until it is restored to entry by the Bureau of Land Management. Action with respect to any restorations of land along the Colorado River and the opening of such land to entry has been suspended owing to litigation between the States of Arizona and California over their rights to use of the waters of the Colorado River.

The decision of the Manager is affirmed.

Mr. Walters is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See attached Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Attachment

DISTRIBUTION

Mr. George Francis Walters (Certified Mail)
Hon. William F. Knowland, United States Senator
Lands Staff Officer (1)
Appeals List No. 1
MAG

In reply refer to:

Los Angeles 0106064
5.04g

July 18, 1958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DECISION

John Hayward Dill	:	Homestead Application

Case Remanded

John Hayward Dill has appealed from a decision of the Manager which rejected his homestead application stating that the terrain is too rocky, steep, and mountainous for agricultural development.

The report of field examination referred to in the Manager's decision characterized the topography of the area in which the subject land is located as too rocky, steep and mountainous for agricultural development under the homestead laws. Photographs with the field report illustrate the mountainous terrain of the area. The area covered in the report, however, is the entire area of sec. 36, T. 4 S., R. 4 E., SBM, California. Although the report specifically considers the instant application involving the E$\frac{1}{2}$NE$\frac{1}{4}$, E$\frac{1}{2}$SE$\frac{1}{4}$ sec. 36, it indicates with respect to this tract that a check of the exterior boundaries of the land and the topographic map were the bases of the findings. The report stated the land in sec. 36 was carefully examined on its south, west, and north boundaries but because the section is so rough and mountainous a check of all the area was not attempted. There is nothing to indicate that the examiner was on the particular land sought by the appellant or made a physical examination of the tract, nor do the photographs which accompany the report relate specifically to the land involved in the subject appeal. The report is thus inconclusive with respect to the tract under application. It does not describe the specific character of the land comprising the tract in issue, the nature of the soil or its adequacy. It fails to show whether there is evidence of an available water source or whether it would be feasible to irrigate any portion of the land.

The case is remanded to the Manager, through the Assistant to the State Supervisor of this Bureau at Los Angeles, California, for a further field examination which will include an on-the-ground inspection of the subject tract, and for further processing of the application upon completion of such field examination. Should the report of supplemental field examination tend to support the appellant's contentions as to the suitability of the land for the purpose intended, Mr. Dill will be allowed an opportunity to cure his application by supplying reasonably detailed information on source of water for irrigation purposes and evidence of a water right or steps taken to acquire the same so as to meet the requirements of the regulations, 43 CFR, 1954 ed., 296.4.

For the Director
John B. Piccolo

MAGannon:

DISTRIBUTION:

Mr. Thurman Arnold, Jr., Attorney for Appellant (Regular Mail)
Mr. John Hayward Dill (Regular Mail)
Mr. Walter H. Gregory (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

39080

In reply refer to:
Los Angeles 0146473
5.04g

August 18, 1958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Donald Arthur Lewis : Homestead Application

Manager's Decision Affirmed

Donald Arthur Lewis has appealed from a decision of the Manager, rejecting his homestead application for the stated reason that the land applied for is within a first form reclamation withdrawal.

The appellant contends that the land has been restored to entry. A check of the records in the Bureau of Land Management reveals that the lands selected by the appellant were withdrawn on August 20, 1931, under a first form withdrawal pursuant to section 3 of the Reclamation Act of June 17, 1902 (43 U.S.C., 1952 ed., sec. 416), for use of the Bureau of Reclamation in connection with the Colorado River Storage Project. The land, according to the records of the Bureau of Land Management, is still withdrawn for that purpose and is therefore not subject to entry.

The regulations of the Department, 43 CFR 230.12, provide that lands embraced in a first form withdrawal cannot be "entered, selected, or located in any manner so long as they remain so withdrawn" and applications for such lands must be rejected. *Alma Everett Morris et al.*, A-27235 (December 12, 1955).

It is well settled that where land is not subject to entry or other disposition under the public land laws, an application to enter the land must be rejected. *Elmer U. Wright*, A-26975 (September 27, 1954). The Department has held that applications for withdrawn lands may not be held in suspense until the restoration of the land to entry and then considered as if filed at the instant that the land is restored to entry. *Emily Juanita Miller*, A-26966 (September 20, 1954).

Accordingly, the Manager's decision is affirmed.

A check of the records in the Bureau of Land Management reveals that the lands in issue, and other lands, were released from withdrawal by the Bureau of Reclamation. The lands are not subject to disposal until they are restored to entry. Keith Specking et al., A-26190 (July 24, 1951). However, when the lands are restored by the Bureau of Land Management,* they will be subject to the provisions of section 4 of the Act of September 27, 1944, as amended (43 U.S.C. 282), which accords to honorably discharged veterans of World War II, the Korean Conflict, and others a preference right of 90 days to file applications under the homestead or desert land laws or under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., sec. 682a), for land restored from withdrawal.

Mr. Donald Arthur Lewis is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed From 4-1365. In taking an appeal there must be strict compliance with the regulations.

Acting Director

Enclosure

DISTRIBUTION:

Hon. William F. Knowland, United States Senate (Regular Mail)
Mr. Donald Arthur Lewis (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

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*Restoration of lands along the lower Colorado River has been suspended until such time as present litigation between the States of California and Arizona over their rights to use the waters of the Colorado River has been settled.

appeal to Sec
affirmed A-27875 4-2-59

In reply refer to:
Sacramento 054353
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 22, 1958

Certified Mail
Return Receipt Requested

DECISION

Richard P. Woitke	:	Homestead

Manager's Decision Affirmed

Richard P. Woitke has appealed from a decision of the Manager rejecting his homestead application for the reason that the land applied for was never public domain, but part of the Private Land Grant (Mexican Land Grant) known as the Cotate Rancho.

The official plat of survey approved September 29, 1866 shows the land described in the application as being part of the Cotate Rancho Mexican Land Grant. In accordance with the Act of March 3, 1851, the grant to the land was confirmed by the Board of Land Commissioners, and the decree was affirmed by the United States District Court for the Northern District of California on January 14, 1856. Letters of patent thereupon issued on February 18, 1858 in the name of Thomas S. Page and his assigns.

Where land has been patented, this Department has no further jurisdiction over the land., Newton's Fork Gold Mining Company, A-27109 (April 27, 1955), and an application for patented land must be rejected. Nelson D. Jay, A-27468 (December 4, 1957). The decision of the Manager is affirmed.

Mr. Woitke is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G. H. Kerr

Enclosure

DISTRIBUTION:
Mr. Richard P. Woitke (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

40658

In reply refer to:

Los Angeles 0134355
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 4, 1958

Certified Mail
Return Receipt Requested

DECISION

Carl A. Kuhn : Homestead Application

Decision of the Manager Affirmed

Carl A. Kuhn has appealed from a decision of the Manager which rejected his application for the stated reason that the land is not suitable for agricultural purposes because of the rough and broken topography, inadequate ground water supplies for irrigation, and bacause the land had been classified for small tract purposes.

Field reports reveal that most of the land is rough, steep, and hilly, and that the more level parts are cut by numerous active gullies. The reports also indicate the soils on the land are gravelly to coarse sandy loams. Annual precipitation in the area is 5 inches or less and inadequate for dryland crop production. Therefore, any crop production must be by irrigation. The lands are located in the Mojave Drainage Basin and outside the "zone of influence" of the Mojave River. The record indicates that there is no water available for irrigation other than the annual recharge from the Mojave River within the "zone of influence" of the River and the present use of the underground water already exceeds the long-time annual inflow available.

Since the soils on the lands are of inferior quality the application could not be properly allowed. John P. Mitchell, A-27266 (March 2, 1956). In Andrew T. Johnson et al., A-27305 (September 25, 1957) the Department decided that agricultural applications for lands lying outside the "zone of influence" of the Mojave River, as are the subject lands, were properly rejected because available water supplies within the Mojave Drainage were already being put to beneficial use and that there was insufficient evidence of an adequate water supply to warrant classification of the lands as suitable for entry.

Moreover, the record indicates that portions of the land are valuable for small tract purposes and they have been classified for disposal under the Small Tract Act. See Classification Order 513, January 23, 1957, F.R. Doc. 57-716; Filed January 30, 1957). The Department has held that agricultural applications are properly rejected where it appears that reclamation of the land is not feasible and other disposition of the land is in the public interest. Helen C. Smith et al., A-26968 (March 4, 1955). This is consistent with action taken in similar cases in the Mojave Drainage Area. Cf. Arthur J. Manley, A-26822 (August 6, 1954).

The issue is that of the proper classification of the land and the appellant has not shown that the adverse classification is in error. Cf. Mary Refugio Jackson et al., A-27236 etc. (February 29, 1956). Therefor the decision of the Manager is affirmed.

Carl A. Kuhn is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR, Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Furr

Attachment:

DISTRIBUTION:
Mr. Carl A. Kuhn (Certified Mail)
Appeals List No. 1
Lands Staff Officer (1)
CFG

42059

In reply refer to:
Sacramento 055280
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 27, 1958

Certified Mail
Return Receipt Requested

DECISION

William A. Aytes : Homestead

Manager's Decision Affirmed

William A. Aytes has appealed from the decision of the Manager which rejected his homestead application 1/ for the stated reason the land has been classified as being unsuitable for homestead entry.

The land is located at or near Hallelujah Junction on the east side of Long Valley, Lassen County, California, and adjacent to U. S. Highway 395 and State Highway 24.

The appellant asserts that the requirements for conducting the usual farming practices need not be considered in his case, since it is his desire to use the land for horticultural experimentation, the soil and climatic conditions of the area in which he is applying being suitable for his needs, and that it is his intention to develop several kinds of trees and plants that will produce under the climatic and other conditions in the Reno, Nevada area.

The appellant has also submitted a detailed plan of irrigation of the land with his application, in which he proposes to obtain water from underground sources.

The appellant, however, has failed to furnish any evidence or factual data from any source that would support his contention that the soil and climatic conditions are suitable for sustained agricultural production under usual systems of farming adapted to the locality, nor has he furnished any factual data to show that there is sufficient under ground water to irrigate the land as proposed. 2/

1/ Filed pursuant to Section 2289, Revised Statutes, (43 U.S.C., 1952 ed., sec., 161)

2/ Before any of the land involved may be opened to homestead entry, it first must be classified as suitable for entry under those laws (43 U.S.C., 1952 ed., sec. 315f), and land that is desert in character may be classified for homestead entry if the applicant makes sufficient showing that the land is susceptible of successful cultivation by irrigation and sufficient water is available. Cf. James Etcheverry, Jr., A-27642 (August 26, 1958).

A report of field examination made in connection with the land and others' shows that an attempt at farming land in the same section was abandoned.

The classification of the land as unsuitable for homestead entry is proper where it is shown that the land cannot be cultivated without irrigation and where no adequate showing has been made that water is available for such irrigation. James Etcheverry, Jr., supra. Furthermore, the appellant has failed to show that the adverse classification of the land as being more suitable for grazing than for agriculture is in error. Cf. Mary Refugio Jackson, A-27326 (December 29, 1956).

Mr. William A. Aytes is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:
John B Piccolo

Enclosure

Distribution:
Mr. William A. Aytes (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

43552

In reply refer to:
Sacramento 046477
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 6, 1958

Certified Mail
Return Receipt Requested

DECISION

William B. Munroe : Enlarged Homestead Application

Manager's Decision Affirmed

William B. Munroe has appealed from a decision of the Manager which rejected his enlarged homestead application for the stated reason that the land applied for is too rough and mountainous for the production of agricultural crops.

The land is located approximately four miles north of Mountain Ranch, California. It is crossed by a fairly good gravel road. The report of field examination discloses that the land is entirely too rough and mountainous for any form of cultivation. The land is valuable for the production of timber crops. The application was subject to rejection for this reason alone. See 43 CFR 167.1. Moreover, the report of field examination indicates that there is no agricultural development on similar lands in the area.

The question in issue is one of proper classification and the appellant has submitted no positive and substantial evidence that the classification of the land is in error. The record reveals no error in the classification of the land as not suitable for agricultural use. The Department has held that where the classification of land applied for under the homestead laws is adverse to the applicant, the burden is on him to show in what respect the classification is in error. In the absence of an error which appears on the face of the record, the applicant must show by positive and substantial evidence that the land is suitable for agricultural use and that the adverse classification is in error. Harry E. Andersen, A-27313 (June 14, 1956). Mere statements by the applicant that the facts are not as stated in the classification is insufficient. Mary Refugio Jackson et al., A-27236 (February 29, 1956). In Vernon G. Golden, A-27248 (March 12, 1956), the Department stated that a homestead application is properly rejected where it appears that the land applied for is rough, steep land, having marginal value for agriculture.

The appellant's statement of reasons for his appeal has been carefully considered. It provides no basis for changing the classification of the land as not suitable for the production of agricultural crops. In view of the uncontroverted findings in the report of field examination that the land is too rough and mountainous for any form of cultivation, the appellant's application was properly rejected. Harry Tisor, Idaho 05443 (July 25, 1957).

Accordingly, the decision of the Manager is affirmed.*

Mr. William B. Munroe is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Munroe, then the adverse parties to be served are:

Mr. and Mrs. Paul F. Sharp
2546 Cedar Street
Berkeley 8, California

Mr. Gus B. Hawver

San Andreas, California

For the Director:

Enclosure

DISTRIBUTION:
Mr. Gus B. Hawver (Regular Mail)
Mr. William B. Munroe (Certified Mail)
Mr. and Mrs. Paul F. Sharp (Regular Mail)
Lands Staff Officer
Appeals List No. 1
AIR

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* The record indicates that a public sale application, Sacramento 053204, has been filed by Paul Francis Sharp and Bernice Pyle Sharp for a portion of the land in issue. A field investigation should be made to ascertain if this tract is suitable for disposal at public sale. Consideration must be given to the land pattern of other timber land in the area; the location, type, and control of access roads where appropriate; the feasibility of timber management in the area; and recreation, wildlife, and other multiple use characteristics of the tract including any special features, if any, that would be incompatible with private ownership.

appeal to Sec
affirmed A-27943 6/15/59

In reply refer to:
Sacramento 051399
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 13, 1958

Certified Mail
Return Receipt Requested

DECISION

James C. Mouat : Homestead Application

Acting Manager's Decision Affirmed

James C. Mouat has appealed to the Director, Bureau of Land Management, from a decision of the Acting Manager, Land Office, Sacramento, California, dated December 28, 1956, rejecting his application for homestead entry, Sacramento 051399, filed under the provisions of Section 2289, Revised Statutes (43 U.S.C., 1952 ed., sec. 161). The application was rejected because the land applied for is too rough and mountainous for cultivation; the climate in the area is such that all agricultural endeavors require irrigation, and the applicant has not shown that he has acquired a water right; and the land is considered more suitable for retention in Federal ownership for the purpose of watershed protection than it is for agricultural purposes.

The report of field examination shows that the soil is thin and low in fertility and quite highly erosive; vegetative cover consists of chamise brush approximately 3 to 5 feet high; area precipitation is about 30 inches, which nearly all falls as winter and spring rains, with only one to two inches during the period from May 1st to October 1st, and therefor irrigation is vitally necessary for the production of crops; the aspect of the land is to the east and the land drains into Maxwell Creek, which flows into the Exchequer Reservoir; and that the thin coarse soil is highly subject to erosion if the native brush cover is disturbed, and such erosion will result in deposition in the reservoir.

Appellant's allegation that the lands are suitable for agricultural purposes is merely an unsupported opinion and does not justify any change in the classification of the land as not suitable for crop production. The Department has held that where the classification of land is adverse to the applicant the burden is on him to show in what respect the adverse classification is in error. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

It has been held by the Department that a homestead entry application is properly rejected where the land applied for cannot be used for raising agricultural crops and where the land is not suitable for agricultural development because of adverse topography. Walter E. Woods et al., A-27376 (February 12, 1957). Furthermore, it is proper to refuse to classify land for homestead entry when the soil is subject to severe erosion when the native vegetation is removed. Donald Elmer Ellis, A-26691 (March 26, 1953).

To verify the appellant's contentions of water rights, on January 17, 1957, the field examiner interviewed an official of the State of California Water Rights Board in regard to the availability of the flow of Maxwell Creek. He stated that the Merced Irrigation District has an appropriative water right to the entire normal flow of the Merced River, of which Maxwell Creek is a minor tributary. That official also stated that the Merced Irrigation District may be expected to oppose the consumptive use of any additional water in this area.

Accordingly the Acting Manager's decision is affirmed.

Mr. James C. Mouat is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. James C. Mouat (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

In reply refer to:
Sacramento 054203
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 17, 1958

DECISION

Gregory Evan Marr : Homestead

Manager's Decision Reversed; Case Remanded

Gregory Evan Marr has appealed from a decision dated October 2, 1957 rejecting his homestead application because the land applied for was granted to the State of California under the School Land Grant Act which patented it to a private party.

The record reveals that the Manager's information was correct. However, the record reveals that the land was reconveyed to the United States upon October 2, 1901 under the Act of June 4, 1897, 30 Stat. 36, and became part of the Kern National Forest. Pursuant to the Proclamation of the President of the United States, No. 1414, dated December 5, 1917, the Kern National Forest was transferred to the Sequoia National Forest and the subject land was excluded from the National Forest and restored to public land status. The proclamation provided inter alia that the land was restored to homestead entry disposition on February 14, 1918, pursuant to the Act of September 30, 1913, (38 Stat. 113).

For the reason stated the decision of the Manager is reversed, and the case is remanded to him through the Bureau's State Supervisor at Sacramento, for further processing upon its merits.

For the Director:

G. H. Dunn

DISTRIBUTION:

SS with case record, Sacramento 054203
Donahue & Goldberg, Attorneys at Law (Regular Mail)
Mr. Gregory Evan Marr (regular Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

45092

In reply refer to:
Colorado 018826
0460
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 17, 1958

Certified Mail
Return Receipt Requested

DECISION

Melvin L. Maxwell	:	Application for Enlarged Homestead

Decision of Manager Affirmed

Melvin L. Maxwell appealed from the Manager's decision of October 29, 1957, which rejected his application for an enlarged homestead because the lands applied for are included in an outstanding homestead entry, Colorado 0460, allowed to Herbert A. Boggs on August 4, 1954.

The records show that the entryman, Herbert A. Boggs, on January 22, 1958, submitted final proof in connection with his homestead entry. The entry remains on the records as an outstanding entry. The Department has consistently followed the rule that "an entry of public land under the laws of the United States segregates it from the public domain, appropriates it to private use, and withdraws it from subsequent entry or acquisition until that entry is officially canceled and removed." R. B. Whitaker et al., 63 I.D. 124 (1956). In the circumstances, the appellant's application cannot be suspended, but must be rejected. Cf. Emily Juanita Miller, A-26966 (September 20, 1954).

The appellant alleges that the homestead entryman has not complied with the requirements of the homestead laws. This decision is without prejudice to the right of the appellant to initiate a contest against the entry, in accordance with the rules of practice.

The decision of the Manager is accordingly affirmed.

Mr. Maxwell is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Maxwell, then the adverse party to be served is:

Herbert A. Boggs
Box 1502
Cortez, Colorado

G. H. Dunn

For the Director

Enclosure

DISTRIBUTION:
Hon. Wayne N. Aspinall, Member of Congress
Mr. Melvin L. Maxwell (Certified Mail)
Mr. Herbert A. Boggs (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

45092

HOMESTEADS * 6 Final Proof

The final proof submitted for a homestead entry should be rejected and the entry canceled where the life of the entry has expired and the requirements for residence and cultivation have not been met.

Bill Earl Depue, Los Angeles 085626 (January 9, 1959)

RO

In reply refer to:
Los Angeles 085626
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 9, 1959

Certified Mail
Return Receipt Requested

DECISION

Bill Earl Depue : Homestead Entry

Decision of Manager Affirmed

Bill Earl Depue has appealed from a decision of the Manager, rejecting the final proof submitted on his homestead entry for the stated reason that he had not complied with the residence and cultivation requirements of the homestead laws.

The residence requirement under the homestead law is satisfied by seven months actual residence on the entry for each year of residence required. 43 CFR 166.36. The cultivation requirement under the homestead law is one-sixteenth of the area during the second entry year and one-eighth of the area during the third, fourth, and fifth years. See Walter H. Bullwinkle, Joseph E. Vogler, 63 I.D. 172 (1956).

The act of September 27, 1944, as amended, 43 U.S.C. 279-284 modifies for the benefit of qualified veterans the requirements for obtaining a patent under the homestead law. The act provides that any person who served in the military or naval forces of the United States on or after September 16, 1940, and prior to the termination of the Korean conflict is entitled to have the period of such service, not exceeding two years, construed to be equivalent to residence and cultivation upon the entered land for the same length of time.

The appellant has submitted with his appeal a photostatic copy of his military discharge which shows more than 26 months active service. Thus, the appellant is entitled to have his two years' military service construed to be the equivalent of residence and cultivation for that period of time under the homestead law.

The appellant's entry was allowed on April 8, 1952. He had therefore until October 8, 1952, in which to establish residence on the entry. (43 CFR 166.22). His final proof as corrected by a statement in his notice of appeal indicates that he did establish residence on the above date. As to his residence thereafter, his final proof shows he lived on the land during the subsequent residence years as follows:

October 8, 1952 - October 7, 1953; two months
October 8, 1953 - October 7, 1954; four months
October 8, 1954 - October 7, 1955; eleven months
October 8, 1955 - October 7, 1956; none.

Since the appellant did not reside on the land for seven months in three residence years, his service credit cannot cure this defect.

As to cultivation, his final proof shows compliance was made with the homestead law only during the last entry year, 1956. Since cultivation of the land was required beginning with the second year of his entry in 1953, as well as in 1954 and 1955, neither can his two years' service credit cure this defect.

The Department has held, in Loma A. Henning, A-26755 (August 17, 1953) that homestead final proof must be rejected where the evidence shows the requirements for cultivation have not been met, and has held that where final proof on its face shows noncompliance with the requirements of the law, the entry should be canceled. Adverse proceedings are unnecessary. United States v. Evan R. Jensen, A-26486 (December 2, 1952).

The Manager's decision is therefore affirmed and the homestead entry is canceled.

Mr. Depue is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Bill Earl Depue, then the adverse party * to be served is:

David L. Plummer
Box 361
Barstow, California

For the Director:

John B [illegible]

Enclosure

DISTRIBUTION:

Mr. Bill Earl Depue (Certified Mail)
Mr. David L. Plummer (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MAG 47754

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* In a letter received in the Land Office September 25, 1951, David L. Plummer stated he believed he had a valid mining claim on the land. No determination has been made by this Bureau with respect to the validity of the claim.

HOMESTEAD * 3 **Classification**

A homestead application for steep, mountainous, sharply broken lands, that are unsuitable for cultivation is properly rejected.

Levert R. Patterson, Los Angeles 0122341 (February 26, 1959)

In reply refer to:
Los Angeles 0122341
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 26, 1959

Certified Mail
Return Receipt Requested

DECISION

Levert R. Patterson : Homestead Application

Decision of Manager Affirmed

Levert R. Patterson has appealed from a decision of the Acting Manager which rejected his homestead application because the land is rough and mountainous and unsuitable for cultivation.

The field report indicates that the land lies on the northern slope of the Sierra Pelona mountains overlooking Ana Verde Valley. The report states that the lands are rough and mountainous, are situated on steep slopes intermingled with rock outcroppings and that the land is unsuitable for cultivation. Topographical maps of the U. S. Geological Survey also reveal that the land is rough and mountainous and cut by numerous short, steep, mountain draws and ravines.

The homestead laws contemplate actual cutlivation of lands entered under the homestead act. Robert B. Marshall et al., A-27586 etc. (January 13, 1959). It is evident from the record that the lands herein involved are unsuitable for cultivation. Appellant has furnished no persuasive evidence of error in the classification of the land as unsuitable for homestead entry. Gene Edwin Simpson, A-27352 (August 13, 1956). Therefore, the decision of the Manager is affirmed.

Mr. Levert R. Patterson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure
DISTRIBUTION:

Mr. Levert R. Patterson (Certified Mail)
Appeals List No. 1
Lands Staff Officer
CFG

49261

La(Sa)

HOMESTEADS * 3 **Classification**

SMALL TRACTS * 3 **Classification**

It is proper to refuse to classify land for homestead entry where it is doubtful that the land would meet the income needs of a farm family and the land appears to be more suitable for disposition under the Small Tract Act.

Bernard Preston Miller, Los Angeles 0135376 (March 3, 1959)

LO

In reply refer to:
Los Angeles 0135376
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 3, 1959

Certified Mail
Return Receipt Requested

DECISION

Bernard Preston Miller	:	Homestead Application

Manager's Decision Affirmed

Bernard Preston Miller has appealed from a decision of the Manager rejecting his homestead application for certain lands in San Bernardino County, California, aggregating 40 acres, for the reason that the tract is not sufficient to meet the requirements of an economic farm unit and because the land is suitable for small tract development.

The report of field examination discloses that (1) the land is located three miles south of Hesperia, California, in a badland area just west of the Mojave River and in the lower foothills of the San Bernardino mountains; (2) the annual precipitation is only five inches; (3) acquisition of water from wells would mean a pumping lift of about 300 feet which, for the area, is not economical; and (4) the amount of possible agricultural land is not sufficient to support a farm family. The field examiner found the land to be valuable for small tract development and the tract, together with other land, was classified for disposal under the Small Tract Act on May 7, 1957.

The question in issue is one of proper classification and the appellant has submitted no positive and substantial evidence that the classification of the land is erroneous. The Department has held that where an applicant for entry of public land is met with an adverse classification by the Bureau, the burden is upon him to show conclusively that the classification is in error, and that the adverse classification will not be disturbed in the absence of a clear showing of error in the classification. Anderson O. Whitener, A-27626 (December 3, 1958).

The Department has indicated that a homestead application is properly rejected where the land applied for would not meet the income needs of a farm family. Charles S. White, A-26853 (June 17, 1954). The Department has also stated that it is proper to refuse to classify land for homestead entry where it is doubtful that the land sought could be developed economically for agricultural purposes, and the land appears to be more suitable for disposition under the Small Tract Act. William John Mauro, A-27318 (July 13, 1956).

The determination as to under which of the public land laws a portion of the public domain should be disposed is entirely within the discretion of the Secretary of the Interior. Thus, the Department has rejected a homestead application where it appeared that the land was suitable for small tract purposes. Darwin M. Cecil et al., A-27047 (January 14, 1955).

The appellant's statement of reasons for his appeal has been carefully considered. It provides no basis for changing the classification of the land. The appellant's application was properly rejected. Donald E. Wiggin, Nevada 014123 (September 8, 1958).

Accordingly, the decision of the Manager is affirmed.

Mr. Bernard Preston Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director

Enclosure

DISTRIBUTION:

Hon. Chet Holifield, House of Representatives
Mr. Bernard Preston Miller (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

In reply refer to:
Los Angeles 0136509
055370
5.04g

March 12, 1959

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DECISION

Paul Edward Mulvaney	:	Homestead Application
Ronald C. Kemp, Assignee of	:	Grazing Lease
H. Cuyler Anderson	:	

Case Remanded

Ronald C. Kemp has appealed from a decision of the Manager which partially canceled his grazing lease upon classification of some of the land covered by the lease as suitable for homestead entry, pursuant to the application of Paul Edward Mulvaney.

This action was predicated upon the belief that the annual precipitation in the area is 17 inches. However, a study of Weather Bureau records indicates that only approximately 5 inches of rain falls during the growing season, which extends from April 1 to November 1. According to the field report, hay and grain for cattle feed are the principal agricultural crops. In view of the slight precipitation, the land may be of doubtful value for agricultural purposes; the minimum acreage required for an economic farm unit under these conditions would be 320 acres.

Accordingly, the case is remanded to the Manager through the Bureau's State Supervisor at Sacramento, California, in order that additional information may be obtained as to the suitability of the land for homestead entry.

For the Director:

DISTRIBUTION:

Hon. Thomas H. Kuchel, United States Senate
Mr. Paul Edward Mulvaney (Regular Mail)
Mr. Ronald C. Kemp (Regular Mail)
Lands Staff Officer
Appeals List No. 1
AIR

50991

A

HOMESTEAD * 2 Application
* 3 Classification

A decision of the Acting Manager which rejected a homestead application on the grounds that the soils on the land are unfit for crop production will be remanded for further appropriate consideration of the application by the field where a recent field report reveals that the land may be suitable for crop production by irrigation.

William V. Johnson, Sacramento 038747 (March 16, 1959)

A

In reply refer to:
Sacramento 038747
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 16, 1959

DECISION

William V. Johnson : Homestead Application

Case Remanded

William V. Johnson has appealed from a decision of the Acting Manager which rejected his homestead application Sacramento 038747 for the stated reason that the land is not suitable for homesteading, as per Commissioner's letter "C" of October 1, 1942. 1/

A recent field investigation reveals that the land may be susceptible of reclamation by irrigation. Accordingly, the case is remanded to the Manager through the Bureau's State Supervisor, Sacramento, California, for further appropriate consideration of the homestead application. 2/

John B. Piccolo
For the Director:

DISTRIBUTION:

Mr. William C. Johnson (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

1/ Letter "C" of October 1, 1942 is a decision of the Acting Assistant Commissioner which held a prior application for the same land, homestead application Sacramento 034305 for rejection on the grounds that the soils on the land are unfit for crop production.

2/ The record is not clear as to whether or not the range user has been placed on notice of the proposed classification. Also it appears from the record that the applicant will irrigate the land to meet with the cultivation requirements of the Homestead Laws in which case the application would come within the purview of the regulation 43 CFR, 1954 ed., 296.4.

50991

appeal to Sec.
Dismissed A-28074 7-16-59

HOMESTEADS * 2 Application
* 3 Classification

PUBLIC SALE * 3 Classification

A homestead application is properly rejected as to that portion of the land applied for which is too steep, rough, and rocky for cultivation, and the land has been classified for disposal at public sale.

Classification adverse to the homestead applicant will not be disturbed in the absence of positive evidence that the classification is erroneous.

Lawrence Edwin Steere, Los Angeles 0106076 (March 13, 1959)

LA(Sac)

HOMESTEADS * 11 Soldiers' Additional Homestead

ADJUDICATION * 7 Fees and Payments

RULES OF PRACTICE * 1 Generally

Where an application for a soldier's additional homestead entry was rejected under the erroneous assumption that the scrip had not been timely recorded in accordance with the Act of August 5, 1955, and the original right is valid, the case will be remanded.

The fee paid to file a notice of appeal is earned when the notice is received and accepted by the Land Office, and it will not be thereafter refunded.

Where the file does not show in what manner the person signing the appeal "as attorney" on behalf of the appellants is authorized to practice before the Department, the decision will be sent to the appellants.

James P. and Edna M. Wasgatt, Sacramento 054140 (March 5, 1959)

ho

In reply refer to:
Sacramento 054140
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 5, 1959

Certified Mail
Return Receipt Requested

DECISION

James P. and Edna M. Wasgatt : Soldiers' Additional Homestead

Case Remanded

James P. and Edna M. Wasgatt have appealed from the Manager's decision, dated October 2, 1958, rejecting their soldier's additional homestead entry application for the stated reason that the scrip had not been recorded pursuant to the Scrip Recordation Act of August 5, 1955 (69 Stat. 534, 535) and cannot be accepted. 43 CFR, 1957 Supp., 130.5.

The appellants, as trustees, applied for a 39.76 acre tract as an additional homestead entry as assignees of the soldier's additional right of William H. Hicks for 40 acres of this right to acquire land. The appellants submitted evidence of their chain of title to the scrip.

The practice of the Bureau is to eyelet the scrip papers to a signed and sealed certificate showing recordation of the scrip in the Washington office scrip recordation book, and without this evidence and no evidence of recordation in the file, the scrip was erroneously assumed not to have been recorded. However, a recheck of the scrip recordation book and other material on file, with the help of certain data submitted by the appellants on appeal, discloses that the scrip was timely recorded on July 31, 1957 in the name of James P. and Edna M. Wasgatt. Moreover, the right of William H. Hicks is valid, and the appellants are the owners as assignees, of 40 acres of this right, which may be used in acquiring public lands of the United States, of the character suitable for disposal under the regulations pertaining to soldiers' additional rights.

Accordingly, upon this decision becoming final, the case is remanded to the Manager, through the Bureau's State Supervisor, at Sacramento, California, for appropriate consideration of the appellants' application.

The appellants paid under protest a $5 filing fee for appealing, and with their appeal request the refund of this money. 43 CFR, 1957 Supp., 221.2 of the Rules of Practice requires, except when a governmental body appeals, that the payment of a $5 filing fee accompany the notice of appeal for each appeal filed. The filing fee is earned when the notice of appeal is received and accepted by the Land Office. Therefore, the appellants' request for a refund of the filing fee is denied.

The notice of appeal and statement of reasons were signed on behalf of the appellants by "their attorney" George B. Bush. The file does not show that Mr. Bush is authorized under any of the provisions of 43 CFR 1.3 to practice in this case before the Department. The decision will be mailed to the appellants.

James P. and Edna M. Wasgatt are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal, there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

James P. and Edna M. Wasgatt (Certified Mail)
SS(California) w/case file
Lands Staff Officer
Appeals List No. 1
JHO'D

50991

appeal to Sec 10-12-59
affirmed A-28053

HOMESTEAD * 2 Application

PUBLIC LANDS * 7 Withdrawals

Land within a stock driveway withdrawal is not subject to homestead entry. The fact that the land might be no longer needed for the purpose for which it was withdrawn would not vitiate the effect of the withdrawal.

Bessie S. Lynn, Los Angeles 0138812 March 6, 1959

RO

In reply refer to:

Los Angeles 0138812
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 6, 1959

Certified Mail
Return Receipt Requested

DECISION

Bessie S. Lynn	:	Homestead Application

Decision of the Manager Affirmed

Bessie S. Lynn has appealed from a decision of the Manager which rejected her homestead application, Los Angeles 0138812 because the land had been withdrawn for stock driveway purposes.

By her appeal the appellant submitted soils maps and other data together with a petition for the revocation of the stock driveway withdrawal.

The record shows that the land is embraced within stockdriveway withdrawal No. 235. The applicable regulation /43 CFR, 1954 ed., 295.7(c)/ provides in part that with an exception not pertinent here, land withdrawn for driveways for stock is not subject to entry or disposition, and applications for the acquisition of land so withdrawn will be rejected by the Manager. Moreover, the Department has held that land within a stock driveway withdrawal is not subject to entry under the agricultural land laws. Cf. Len Everett, A-27050 (March 23, 1955). Nor does the fact that the land may no longer be needed for the purpose for which it is withdrawn vitiate the effect of the withdrawal. See Keith Specking et al., A-26190 (July 24, 1951).

The record indicates that the land may also be valuable and suitable for management as a part of the Walker Pass-Menache Wildlife Management area. Therefore, it appears that the land may be reclassified and retained for management as a part of a game management program if it is not required for stock driveway purposes.

When this decision becomes final, the Assistant to the State Supervisor, Los Angeles, California, shall consider the need of the land for stock driveway, game management, or other purposes and shall institute appropriate proceedings to restore the land to entry if he determines that the land is not so needed. However, should the land become available under the public land laws, the applicant herein would have no priority right to the land as it would be subject to preference right filings by veterans pursuant to section 4 of the act of September 27, 1944, as amended (43 U.S.C., 1952 ed., Supp. IV, sec. 282) and the terms of the public land order opening the land.

Bessie S. Lynn is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mrs. Bessie S. Lynn (Certified Mail)
Hon. Harlan Hagen, House of Representatives
Lands Staff Officer (1)
Appeals List No. 1
CFG

50991

LO (Sac)

HOMESTEADS * 3 **Classification**

Where a grazing lease is canceled because land is classified as suitable for homestead entry and afterwards information is obtained which tends to indicate that the classification was based upon an erroneous belief, and the land may be of doubtful value for agricultural purposes, the case will be remanded in order that additional information may be obtained as to the suitability of the land for homestead entry.

Paul Edward Mulvaney, Los Angeles 0136509 (March 12, 1959)

LO

In reply refer to:

Los Angeles 0106076
0140834
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 13, 1959

Certified Mail
Return Receipt Requested

DECISION

Lawrence Edwin Steere : Homestead Application

Manager's Decision Affirmed

Lawrence Edwin Steere has appealed from a decision of the Manager rejecting his application for homestead entry1/ as to a 40-acre tract of the 80 acres he sought to enter because the land is too steep, rough, and rocky for the production of agricultural crops.

The land is located on dense brush covered, hilly area less than 200 feet north of Moosa Canyon Road, at a point approximately 3$\frac{1}{2}$ miles east of U. S. Highway 395. The report of field examination discloses that lot 3, sec. 5 is too steep, rough, and rocky to be considered for agricultural use; and that the tract, although situated near Moosa Canyon Road, is inaccessible except on foot due to rocky steep slopes which face the road. The tract was classified as suitable for disposal at public sale pursuant to application, Los Angeles 0140834, filed by Ralph Benjamin Elias. The report of field investigation also discloses that the only portion of the land applied for which may possibly be developed for farming is the NE$\frac{1}{4}$SE$\frac{1}{4}$SE$\frac{1}{4}$ of sec. 32.2/

The question in issue is one of proper classification and the appellant has submitted no positive evidence that the classification is in error. The record reveals no error in the classification of the 40-acre tract as not suitable for agricultural use. The Department has held that where the classification of land applied for under the homestead

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1/ Application filed for the SE$\frac{1}{4}$SE$\frac{1}{4}$, sec. 32, T. 10 S., R. 2 W., and lot 3 (NE$\frac{1}{4}$NE$\frac{1}{4}$), sec. 5, T. 11 S., R. 2 W., S.B.M., and rejected as to lot 3 sec. 5.

2/ The 10-acre tract appears to be suitable for use as an avocado orchard.

laws is adverse to the applicant, the burden is on him to show in what respect the classification is in error. In the absence of an error which appears on the face of the record, the applicant must show by positive and substantial evidence that the land is suitable for agricultural use and that the adverse classification is erroneous. Harry E. Andersen, A-27313 (June 14, 1956). Mere statements by the applicant that the facts are not as stated in the classification is insufficient. Mary Refugio Jackson et al., A-27236 (February 29, 1956). In Vernon G. Golden, A-27248 (March 12, 1956), the Department stated that a homestead application is properly rejected where it appears that the land applied for is rough, steep land, having only marginal value for agriculture.

The appellant's statement of reasons for his appeal has been carefully considered. It provides no basis for changing the classification of the tract as not suitable for agricultural use and suitable for disposal at public sale. In view of the uncontroverted findings in the report of field examination that the tract is too steep, rough, and rocky for cultivation, the appellant's application was properly rejected as to the 40-acre tract. Walter E. Woods, A-27396 (February 12, 1957).

It is noted that in his appeal the appellant states that the examination did not cover the land in issue and requests another field examination of the land. The record shows that the land was properly identified and examined with reference to the topographic features shown on the U. S. G. S. Pala Quadrangle, 1949, and to a Corps of Engineers, U. S. Army, triangulation point located in the $SW\frac{1}{4}$ portion of lot 3, sec. 5.

Accordingly, the decision of the Manager is affirmed and the request for a supplemental field examination is denied. When this decision becomes final, further appropriate action will be taken on the application as to the $SE\frac{1}{4}SE\frac{1}{4}$ sec. 32.

Mr. Lawrence Edwin Steere is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Steere, then the adverse party to be served is:

Mr. Ralph Benjamin Elias
817 Silverado Street
La Jolla, California

For the Director:

Enclosure

Distribution - Page 3

DISTRIBUTION:

Mr. Lawrence Edwin Steere (Certified Mail)
Mr. Ralph Benjamin Elias (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

50991

appeal to Sec,
affirmed A-28108
4-19-60

HOMESTEADS * 2 Application
* 3 Classification

SMALL TRACTS * 3 Classification

A homestead application is properly rejected where the land sought appears to be more suitable for small tract development and it has been classified for disposal under the Small Tract Act.

Where land applied for under the Homestead Act is classified as more suitable for development under the Small Tract Act, the classification will not be disturbed in the absence of positive and substantial evidence that the classification is erroneous.

Orman McClellan Rainwater, Los Angeles 0152927 (April 10, 1959)

DEPT. OF INTERIOR
SACRAMENTO, CAL.
APR 28 1 42 PM 1959
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
Los Angeles 0152927
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 10, 1959

Certified Mail
Return Receipt Requested

DECISION

Orman McClellan Rainwater : Homestead Application

Acting Manager's Decision Affirmed As Modified

Orman McClellan Rainwater has appealed from a decision of the Acting Manager, dated June 10, 1958, which rejected his homestead application filed on September 23, 1957, for the NW¼, sec. 15, T. 4 N., R. 2 E., S.B.M., California. The application was rejected because all the land sought, except a 12.5 acre tract, had been classified as suitable for disposal under the Small Tract Act. The application was rejected as to this 12.5 acres because the tract is not suitable for agricultural development. Small tract applications embracing the land in issue were pending when the homestead application was filed. *

The records indicate that approximately 88,400 acres of land in San Bernardino County, California, were classified as suitable for disposition under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., Supp. V, sec. 682a), by Classification Order No. 563 of May 15, 1957, published in 22 F. R. 3895. This classification order was amended on June 20, 1957 to include, among other lands, the land in issue. The amendment appears in 22 F. R. 4691. On April 29, 1958, the classification order was again amended to exclude, among other lands, the SW¼NW¼NE¼NW¼, SE¼NE¼NW¼NW¼, N½SW¼NW¼NW¼, and NW¼SE¼NW¼NW¼, sec. 15, T. 4 N., R. 2 E., containing 12.5 acres, because an examination had disclosed that the tract was not suitable for small tract use. However, this amendment was revoked on July 30, 1958 (23 F. R. 6001), and all the quarter section is now within Classification Order No. 563. Therefore, all the NW¼, sec. 15, is suitable for disposal under the Small Tract Act. The decision of the Acting Manager is modified accordingly.

The question in issue is one of proper classification and the appellant has submitted no positive and substantial evidence that the classification of the land as suitable for small tract development is in error. The record indicates that the land has a higher suitability for small tract purposes than for any other use. In William John Mauro, A-27318 (July 13, 1956), the Department held that it is proper to refuse

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* See Appendix "A", attached hereto

to classify land for homestead entry where the land sought appears to be more suitable for disposition under the Small Tract Act. See also Darwin M. Cecil et al., A-27057 (January 14, 1955).

The appellant's statement of reasons for his appeal has been carefully considered. It provides no basis for changing the classification of the land. The appellant's application was properly rejected. Donald E. Wiggin, Nevada 014123 (September 8, 1958).

Accordingly, the decision of the Acting Manager is affirmed as modified.

Mr. Orman McClellan Rainwater is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Rainwater, then the adverse parties to be served are the small tract applicants listed on Appendix "A".

For the Director:

Enclosure

DISTRIBUTION:

Mr. Orman McClellan Rainwater (Certified Mail)
Each Small Tract Applicant (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

APPENDIX "A"

Serial No. (Los Angeles)	Name	Address
LA 0130775	Raymond A. Eversole	950 E. "I" Street Ontario, California
LA 0130891	Nicholas J. Diederich	3219 Roxanne Long Beach, California
LA 0130892	Ramona E. Wolf	3644 Corona Street Norco, California
LA 0130896	Eugene C. Beal	1512 S. Third Avenue Arcadia, California
LA 0130898	Bryce W. Butler	P. O. Box 572 Vista, California
LA 0130899	George M. Butler	P. O. BOX 572 Vista, California
LA 0130903	John E. Hamlin	3327 Studebaker Road Long Beach, California
LA 0130906	Wayne F. Bustamente	522 Grove Arvin, California
LA 0130911	Gus Berlin	1141 Pine Avenue, Apt. 9 Long Beach 13, California
LA 0130915	Cory C. Aylor	1507 W. "D" Street Ontario, California
LA 0130918	Solomon J. Cross	742 Carley Road Santa Rosa, California
LA 0130920	Albert F. Berlin	2823 Montair Avenue Long Beach 15, California
LA 0131010	James H. Patterson	c/o Jess Cain 6906 Bingham Dearborn, Michigan
LA 0131011	Edwin G. Pipp	933 Ivy Lane Anaheim, California
LA 0131012	Kenneth E. Mosholder	106 Larch Street Anaheim, California
LA 0131145	Shirlee J. Moore	416 Broadway S.E. Apt. 4 Albuquerque, New Mexico

APPENDIX "A"

Serial No. (Los Angeles)	Name	Address
LA 0131239	Chloe A. Patchin	1380 W. 38th Street Los Angeles 62, California
LA 0131240	Olga M. Booth	224 E. Vernon Avenue Los Angeles 11, California
LA 0131241	Michael Minko	5179 Emporia Avenue Culver City, California
LA 0131242	Charles K. Strong	8602 S. Gramercy Place Los Angeles 47, California
LA 0131243	Charles L. Short	5323 W. 116th Los Angeles 45, California
LA 0131334	Katherine M. Jones	1701 - 265th Street Harbor City, California
LA 0131438	Everett C. Berg	830 W. 10th Street San Pedro, California
LA 0131439	George E. Patten	922½ W. 7th Street San Pedro, California
LA 0131533	Oscar Lunden	Springdale, Arkansas
LA 0131815	Daisy M. Bonebright	576½ W. 11th Street San Pedro, California
LA 0131901	Della M. Grasse	46 Linden Avenue Long Beach, California
LA 0132168	George W. Carmack	985 W. 1st Street San Pedro, California
LA 0132728	Robert A. Miller	5418¼ Harold Way Hollywood, California
LA 0132729	Thomas C. Dragna	1015 E. Harvard Road Burbank, California
LA 0133457	Robert R. Block	27130 Dapplegray Lane Rolling Hills, California
LA 0133467	Dale L. Pace	27147 Buckskin Lane Rolling Hills, California

LO(lac)

Hd.

RULES OF PRACTICE * 11 Statement of Grounds

An appeal from a decision of the Manager is properly dismissed where the appellant fails to assign any specification of error in the decision appealed from.

Clyde J. Miller, Los Angeles 0134200 (April 10, 1959)

ho

In reply refer to:
Los Angeles 0134200
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 10, 1959

Certified Mail
Return Receipt Requested

DECISION

Clyde J. Miller : Homestead Application

Appeal Dismissed

Clyde J. Miller has appealed from a decision of the Manager rejecting his homestead application because of the poor soils and unfavorable topography of the land.

In the notice of appeal the appellant merely states "I would like to acquire the above parcel of land as it joins my forty acres. I believe there is 10 or 15 acres which could be used as pasture and quite a bit of the rest for grazing."

The appellant has failed to state his reasons for the appeal from the decision of the Manager as required by the rules of practice. The statement does not point out why the appellant believes the decision is in error. Therefore, the statement does not meet the requirements of the rules of practice. Those rules require that a statement of reasons for an appeal must be filed. Under the current rules, the statement may accompany the appeal but, if it does not, it must be filed within 30 days after the notice of appeal is filed. 43 CFR, 1954 Rev., 221.2 and 221.3 (Supp.). The rules provide for the summary dismissal of an appeal "If the statement of reasons for the appeal is not included in the notice of appeal and is not filed within the time required." 43 CFR, 1954 Rev., 221.98(a) (Supp.). Accordingly, Mr. Miller's appeal is dismissed. Cf. Duncan Miller, 65 I.D. 290 (1958). *

Even if the procedural defect were not present, consideration of the appeal on its merits would not warrant any change in the decision of the Manager.

The report of field examination discloses that the topography of the land is rough and mountainous, consisting of rough rolling ridges sloping to the north and northeast; and that the soil is a thin gravelly sandy loam of poor quality with numerous rock outcroppings. The land is therefore not suitable for the production of agricultural crops. Accordingly, the homestead application was properly rejected. The decision of the Manager is deemed to be correct.

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* See also Leo and Ethel Small et al., Nevada 016534 etc. (January 9, 1959).

Mr. Clyde J. Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Clyde J. Miller (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

52894

Appeal to Sec.
Remanded A-28099
67 I.D.

LO (Sac)

HOMESTEADS	* 3 Classification
CLASSIFICATION	*3 Lands Mineral in Character
MINING CLAIMS	* 10 Mineral Land

Mineral lands are not subject to entry under the homestead laws, except as otherwise provided by law.

John Manley DeBevoise, Los Angeles 0153803 (April 14, 1959)

DEPT. OF INTERIOR
SACRAMENTO, CAL.
APR 27 10 12 AM 1959
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:

Los Angeles 0153803
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 14, 1959

Certified Mail
Return Receipt Requested

DECISION

John Manley DeBevoise : Homestead
:
:

Decision of Manager Affirmed

John Manley DeBevoise has appealed from the Manager's decision, dated August 7, 1958, rejecting his homestead entry application because the land is classified as mineral in character and not subject to agricultural entry.

Geological Survey has reported the land may be valuable for arsenic and gold. A report of mineral examination states that the land in issue contains significant quantities of arsenic and although it would be uneconomica to mine and process the ore at present, a small change in prices could stimulate a productive campaign. Chip samples taken from a vein in the south drift and the north drift assayed $1.62 in gold and silver and 2.17% arsenic. A grab sample assayed $1.95 in gold and silver and 3.82% arsenic. Based on the present price of arsenic oxide and 100% recovery, the ore would have a value of about $7.00 a ton.

The appellant concedes that the land is mineral in character, but submitted a statement by one of the incorporators of a company which attempted arsenic and gold mining on the land. The statement shows that the venture was unprofitable.

Sec. 201 of 43 U.S.C. provides that mineral lands shall not be subject to entry and settlement under the homestead laws.* See *Mrs. Bertha Cooper*,

---

* The law has been modified to authorize disposal of lands under the homestead laws where the mineral character of the lands is predicated upon the existence of minerals, which may be reserved to the United States under applicable statutes, e. g. act of July 17, 1914, as amended 30 U.S.C. 121-124, act of June 22, 1910, 30 U.S.C. 83. Cf. 43 CFR 166.2.

Denver 046848 (August 21, 1958). The determination of the mineral character of land is not dependent upon local economic and industrial conditions, subject to change in character with the ephemeral shifts in economic supply and demand for the particular deposit. United States v. State of Utah, 51 L.D. 432, 436 (1926). Thus, since the appellant concedes and the record shows the land is valuable for mineral, evidence that at present the land cannot be mined profitably, does not establish that the classification of the land as mineral is erroneous. Cf. Freeman v. Summers, 52 L.D. 201, 206 (1927).

Accordingly, the decision of the Manager is affirmed.

John Manley DeBevoise is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal, there must be strict compliance with the regulatinns.

For the Director:

Enclosure

DISTRIBUTION:
Mr. John Manley DeBevoise (Certified Mail)
Lands Staff Officer
Minerals Staff Officer (5)
Geological Survey (3)
Appeals List No. 1
JHO'D

52694

appeal to Sec
Remanded A-28344 · 9-13-60

DOCKET FILES

HOMESTEAD * 3 Classification

Where it appears that lands are rough and steep, having only marginal value for agricultural purposes, a homestead application embracing such lands must be rejected.

Garold E. McGill et al., Los Angeles 0136894 (December 10, 1959)

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles 0136894
0138646
5.04g

December 10, 1959

Certified Mail
Return Receipt Requested

DECISION

Garold E. McGill et al. : Homestead Applications

Decision Affirmed

Mr. Garold E. McGill and Mr. Fred W. Housholder have appealed from a decision which rejected their homestead applications, filed under 43 U.S.C., 161, because the lands applied for have rough, mountainous terrain and are topographically unsuitable for cultivation.

Mr. McGill has applied for the N$\frac{1}{2}$S$\frac{1}{2}$, sec. 22, T. 5 S., R. 1 E., S.B.M. With respect to this land the field report discloses that it is composed of undulating ridges which vary in slope from 10 to 30 percent. It states that although the land lies within an area of sufficient rainfall for dry-farming 1/ the terrain is too steep and broken for cultivation, concluding that no more than 20 acres, in scattered plots, could be cultivated without excessive flood and erosion damage. The record shows that the field examiner located the lands by reference to section corners contrary to Mr. McGill's assertion that the examiner probably inadvertently examined other lands.

The lands for which Mr. Housholder has applied are described as the N$\frac{1}{2}$NE$\frac{1}{4}$ sec. 22, N$\frac{1}{2}$NW$\frac{1}{4}$ sec. 23, T. 5 S., R. 1 E., S.B.M. These lands are described in the field report as rough and mountainous, made up of many steep ridges divided by deep dry washes with slopes from 20 to 60 percent. They are also described as too steep and broken for cultivation.

1/ These appellants applied for lands under the basic homestead law, under which either dry-farming or cultivation by irrigation is acceptable. The reports of field examination indicate that the cost of obtaining irrigation water from the Municipal Water District would be disproportionate to the anticipated returns from farming the land.

Where it appears that lands are rough and steep, having only marginal or no value for agricultural purposes, a homestead application embracing such land must be rejected. Vernon G. Golden, A-27248 (March 12, 1956).

The appellants have not rebutted the adverse classification by positive and substantial proof that the classification of the land is in error. Cf. Mary Refugio Jackson et al., A-27236 (February 29, 1956). Use of portions of the land as a turkey farm, as suggested by Mr. Housholder would not obviate compliance with the cultivation requirements of the homestead laws.

Accordingly, the decision appealed from is affirmed.

Mr. McGill and Mr. Housholder are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Hon. D. S. Saund, House of Representatives
Mr. Garold E. McGill (Certified Mail)
Mr. Fred W. Housholder (Certified Mail)
Lands Staff Officer
Appeals List No. 1
LLM

DOCKET FILES

HOMESTEAD * 2 Applications

Land is properly classified as unsuitable for homestead entry where the total tillable acreage is too small to meet the income needs of a farm family.

Benjamin E. Briscoe, Sacramento 055298 (January 28, 1960)

In reply refer to:

Sacramento 055298
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 28, 1960
Certified Mail
Return Receipt Requested

DECISION

Benjamin E. Briscoe : Homestead

Decision of the Manager Affirmed

Mr. Benjamin E. Briscoe has appealed from a decision of the Manager, dated August 17, 1959, rejecting his homestead application for the reason that the land cannot be dry-farmed due to insufficient precipitation and is nonagricultural in character due to insufficient water for artificial irrigation.

The record discloses that the land appears to be suitable for the production of certain crops with the aid of irrigation by sprinkling, but that there is no water available for such operations. It further discloses that dry-farming operations are conducted in the area but only on large acreages. It concludes that the 80 acre tract for which the appellant has applied cannot be considered as an economic unit for dry-farming operations in this particular area.

The Department has indicated that it is improper to classify land as suitable for homestead entry where the total tillable acreage is too small to meet the income needs of a farm family. Cf. Charles S. White, A-26853 (June 17, 1954). Without suggesting that an absolute standard can be established for all cases, the Department has, on previous occasions, held that 80 acres is insufficent acreage for dry-farming operations. Walter E. Woods et al., A-27376 (February 12, 1957).

The appellant contends that successful dry-farming is being carried on in the immediate vicinity; however, these operations are conducted on larger units and summer fallowing is a common and necessary practice. This and the other matters presented by the appellant in his statement of reasons have been carefully considered and present no basis for changing the classification of the land. In the absence of an error which appears on the face of the record, the applicant must show by positive and substantial evidence that the classification is erroneous. Harry E. Andersen, A-27313 (June 14, 1956). A statement by that appellant that the facts are not as stated in the classification is insufficient. Mary Refugio Jackson, et al., A-27236 (February 29, 1956).

The available evidence substantiates the conclusion that the land in question is of insufficient acreage for an economic dry-farm unit, and the application was properly rejected. *George Gunderson*, A-25821 (Febrary 14, 1950).

The decision of the Manager is, accordingly, affirmed.

Mr. Briscoe is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Earl J Thomas
Acting Director

Enclosure

DISTRIBUTION:

Mr. Benjamin E. Briscoe (Certified Mail)
Hon. Harlan Hagen, House of Representatives
Lands Staff Officer
Appeals List No. 1
LLM

appeal to Sec L O (Sec)

DOCKET FILES

HOMESTEAD * 3 Classification

ADJUDICATION * 1 Generally

A homestead application is properly rejected, where the land applied for could not be developed economically for agricultural purposes.

The classification of land as having no possible value for homesteading will not be disturbed, in the absence of positive evidence that the classification is erroneous.

John Hayward Dill, Los Angeles 0106064 (March 22, 1960)

20

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles 0106064
5.04g

March 22, 1960

Certified Mail
Return Receipt Requested

DECISION

John Hayward Dill : Homestead

Decision Affirmed

John Hayward Dill, through his attorneys, has appealed from the decision of the Acting Manager, Los Angeles Land Office, dated October 2, 1959, which rejected his application for homeatead entry on the ground that the land was more suitable for the production of native forage crops than for agriculture.

The appellant alleges that the land is suitable for agriculture.

The record shows that the appellant filed an application for homestead entry containing 176.19 acres on July 8, 1953. On December 14, 1954, the application was rejected for the stated reason that the terrain is too rocky, steep and mountainous for agricultural development. By decision of July 18, 1958, the Bureau remanded the case for further field examination. The supplemental report shows that the surface area of the lands applied for is covered with numerous rocks ranging in size from pebble to 2 feet or larger. A soil profile of the land showed the following:

> Surface - about 50% covering of rock and rock fragments.
> 1st four inches - very course, rocky sand (in scattered places up to 12 inches)
> 2nd four inches - Fractured disintegrated bedrock
> Below eight inches - Bedrock

The supplemental report found that except for 20 acres in the southwest corner of the section (the appellant's application is for the east half of the east half) the lands are extremely rocky and mountainous with elevations ranging from 500 to 1500 feet above sea level. Entry from the north is impossible due to precipitous canyon walls from the east and most of the land is not accessible on foot. The 1958 report states that lot 1 and the north portion of lot 2 are very broken steep terrain with some slopes in excess of 45%. The remaining lands are hilly to steep with slopes ranging from 2 to 20% and all of the land is extremely dissected by numerous sharp drainages.

The appellant submitted the appraisals of a farm advisor, an agricultural inspector, and the director of a desert museum. The farm advisor stated that 15-20% of the total area could be used but his report refers to the entire section instead of to the specific subject land. Therefore it cannot be determined whether he is describing the southwestern or the eastern portion of the section. His opinion was that the small area of gravelly sand loams that could be used has low water holding capabilities, is low in native organic matter and fertility which requires an adequate water supply and large quantities of plant nutrients, and that its agricultural use would be contingent on proper land leveling procedures because the area is dissected with considerable washes. And finally he states, "These soil types would be adapted to only a very limited range of crops."

The agricultural inspector's report refers to "your ranch property south of Araby point" and without in any way stating that he saw the specific lands gives his opinion that the land is suitable for fan palms and other crops such as grapes, alfalfa, and tomatoes. The report from the desert museum director refers to the "section of the Murray Hills" without stating whether he is referring to the subject land. It's his opinion that assuming water was brought to the land, a variety of plants including grapefruit, lemon, and tangerine could be introduced.

On the other hand, the latest field report states that the land has no possible value for agricultural development.

The statements of the agricultural inspector and the museum director have no probative evidentiary value because they fail to show that those persons were describing the specific land in issue. Assuming, however, that the farm advisor's statements do refer to the subject lands, it is apparent that a 176.19 acre tract of which at best only 15 to 20% of which can be cultivated, which has no ready supply of water, which is low in native organic matter and fertility, which would require proper land leveling procedures and which would even then be adapted to "a very limited range of crops" is not what could in any way be described as an economic farm unit. (See Departmental decisions William John Mauro, A-27318 (July 13, 1956), Charles S. White A-26853 (June 17, 1954), Donald Elmer Ellis, A-26691 (April 2, 1953)).

The Department has held that whenever the Bureau classifies land as unsuitable for the purpose for which the application was made, the burden is placed on the applicant to show in what manner the Bureau's adverse classification was in error. The classification will not be disturbed in the absence of positive evidence that the classification is erroneous. Mary Refugio Jackson, A-27236 etc. (February 29, 1956).

Accordingly, the decision of the Acting Manager was proper and it is affirmed.

John Hayward Dill is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G. H.

Enclosure

DISTRIBUTION:

Slaughter, Schlesinger & Schlecht, Attorneys at Law (Certified Mail)
Mr. John Hayward Dill (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MHS

appeal to Sec

HOMESTEADS	* 2	Application
RULES OF PRACTICE	* 9	Service on Adverse Party
	* 11	Statement of Grounds
SMALL TRACTS	* 1	Generally
PUBLIC SALE	* 3	Classification

An appeal is subject to dismissal where the appellant does not submit evidence that a copy of his statement of reasons was served upon the adverse party within the time and in the manner required by the rules of practice.

An appellant has an affirmative duty to show in what respect the decision appealed from is in error and failure to do so will result in the dismissal of the appeal.

Donald R. Simmons, Los Angeles 0153829 (June 5, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 0153829
5.04g

June 5, 1960

Certified Mail
Return Receipt Requested

DECISION

Donald R. Simmons : Homestead

Appeal Dismissed

Donald R. Simmons has appealed from the decision of the Chief, Land Adjudication Unit, Los Angeles Land Office, dated July 17, 1959, which rejected his homestead application filed on December 2, 1957 because the subject lands are unsuitable for homestead entry. The adverse party was named in the decision.

The case file reveals that the appellant stated that he was sending a copy of his appeal, by registered mail, to the adverse party of record; but the file does not contain the return receipt card. This Bureau sent a letter to the appellant on December 7, 1959, requesting that he submit the post-office return receipt card as evidence that delivery of the copy of the appeal was timely made. No answer was received from the appellant. Therefore, the appellant has failed to comply with departmental regulations 43 CFR 221.4 and 221.98.

Moreover, the appellant has failed to specify wherein he believes the land office decision was erroneous. The Department has held that a person who avails himself of the privilege of submitting his grievance for adjudication is required to assume the burden of pointing out clearly the precise grounds upon which reversal is sought. United States and Salt Lake City v. Wayne E. Watrous, A-27759 (May 15, 1959). For failure to state the grounds on which the appeal is based, the appeal is defective. Duncan Miller, 65 I.D. 290 (1958).

In view of the above, the appeal is dismissed.

The decision appealed from indicated that the land had been classified for disposal under the public sale law. However, before any action is taken in regard thereto, consideration should be given to the anti-speculation policy of the Department.

Donald R. Simmons is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

In the event that an appeal is taken the adverse party to be served with the notice thereof is:

Valley Center Farms
c/o Howard C. Fletcher
940 South Alameda Street
Los Angeles, California

For the Director:

Enclosure

DISTRIBUTION:

Donald R. Simmons (Certified Mail)
Valley Center Farms (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MHS

appeal to Sec
affirmed as modified A-28645
9-27-61

DOCKET FILES

HOMESTEAD * 3 Classification

It is proper to refuse to classify land for homestead entry where the land is of poor soil quality, is noncultivatable, and economically unfeasible to operate as a livestock enterprise, and the land is more suitable for disposition by public sale.

Irving C. Elliot, Sacramento 053722 (July 28, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 053722
5.04g

July 28, 1960

Certified Mail
Return Receipt Requested

DECISION

Irving C. Elliot : Homestead Application

Decision Affirmed

Irving C. Elliot has appealed from a decision of the Manager which rejected his homestead application on the grounds that the land is of poor soil quality, is noncultivable and does not qualify for disposal under the Homestead Law.

The field report in the record reveals that the land is unfit for dry land crop production because of factors of soil and topography; it is economically unfeasible to cultivate, and as a livestock enterprise, the acreage itself and carrying capacity thereof are insufficient to support an economic family unit under existing operating cost and resulting return from livestock products. The report further reveals that subject lands are an isolated tract and are more suitable for disposition by public sale. On the basis of the field examination, the lands were classified as improper for homestead entry and as proper for public sale on the Government's motion or through application by a qualified applicant.

The appellant contends in substance that the Manager's decision is incorrect, and outlines how he could make an economically feasible unit of subject lands, but he fails to offer any evidence that the classification of the land is erroneous.

It appears from the evidence contained in the record that the land applied for, if at all suitable for agricultural development, is only marginal agricultural land. It is a well settled principle, and the Department has consistently held, that the classification of land applied for under the homestead law as unsuitable for agricultural production because of poor soil and topographical features will not be disturbed in the absence of positive evidence that the classification is erroneous. John G. Gibbs, A-27855 (February 19, 1959).

Accordingly, the decision of the Manager is affirmed.

Mr. Irving C. Elliot is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR, Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Dunn

Enclosure

DISTRIBUTION:

Mr. Irving C. Elliot (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JJS

78567-60

appeal to Sec
Hd - dismissed
ST affirmed

A-28700
7-11-62

DOCKET FILES

HOMESTEAD * 2 Application
* 3 Classification

SMALL TRACTS * 2 Application
* 3 Classification

CLASSIFICATION * 2 Area Classification

Homestead and small tract applications for lands which are classified for retention by the Government as being chiefly valuable for recreation and for other public purposes are properly rejected.

Gregory E. Marr et al., Sacramento 054203 etc. (September 8, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 054203 etc.
5.04g

September 8, 1960

Certified Mail
Return Receipt Requested

DECISION

Gregory E. Marr et al. : Homestead-Small Tracts

Decision Affirmed

Gregory E. Marr, who is a homestead applicant and 39 small tract applicants[1] have appealed from the decision of the Manager, Sacramento Land Office, dated May 11, 1960, which rejected their applications for the reasons that the lands are unsuitable for small tracts or for an agricultural homestead entry. The decision also held that the lands have a very high potential for public recreation purposes and that they are classified for retention in Federal ownership for multiple-use management for Range, watershed, wildlife, recreation, access, and other public purposes and that it would therefore be improper to dispose of the lands under the public land laws.

Mr. Marr alleges that the 160-acre tract for which he applied is suitable for agriculture and in support thereof he submitted a laboratory report, affidavits, and photographs.

The small tract applicants, all of whom, except one, submitted identical statements of reasons, allege that the lands are suitable for small tracts, that the recreation area now being used is already sufficiently large to accommodate the public and that it is an injustice to each of the applicants to take from them the privilege that was granted to them by the small tract act. The appellant who filed a different statement alleges that the classification is erroneous because it would take 50 years to utilize this land to within one mile of the lake shore for recreation purposes even with the influx of people at its highest potential. But he adds that, "We are hoping that the solitude and the fishing offered in this area would tend for us to forget the daily cares of life and to pursue happiness."

The field report shows that the lands are rough and rocky with slopes varying from 5 to 80% and that they are covered with granite boulders or outcroppings and that the characteristics of the area make the lands unsuitable for any type of agricultural use. The report also states that the lands cannot be divided into regular plots for homesites because of the steep terrain and because it would not be in the public interest to undertake the expense of a costly survey and the construction of the necessary contour road.

---

[1] See appendix "A" attached.

The expert testimony submitted by the appellant Marr was considered, analyzed in detail and found not to be persuasive. No details of the analysis are reproduced here because the agricultural or non-agricultural character of the land is not the controlling issue in this appeal.

The Department has held that public lands are not subject to disposal until so classified and opened to entry and the decision as to whether the lands will be classified for disposal under the public land laws or not at all depends upon the public interest in the matter. Nelson A. Gerttula, 64 I.D. 225 (1957). In a decision involving 64 small tract applications for lands in this same Lake Isabella area this Bureau held that the allowance of the small tract applications to serve only the recreational needs of the applicants would not be in the public interest, Madeline Annie Albert et al., Sacramento 050009 etc., (May 16, 1958). Moreover, it is the express policy of the Department to make public lands, valuable for public recreational purposes, available for use by the general public. See Policy Statement approved April 16, 1958, by the Secretary of the Interior. Cf. Rhinelander Paper Company, BLM 039674 (Wis.) (November 3, 1958).

Moreover, in the absence of any error which appears on the face of the record, the burden is on the appellant to show by positive and substantial evidence that the classification is erroneous. Mary Refugio Jackson et al., A-27236 etc. (February 29, 1956).

The appellants' statements of reasons on appeal provide no basis for changing the classification of the land. Cf. Lafayette M. Hughes, A-27213 (December 28, 1955).

The contention that the amount of land that was classified for recreation and other public purposes is in excess of the public need is negated by the record of the growth and development of this and similar areas.

In view of the foregoing, the decision of the Manager is affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all of the applications adversely affected by this decision the total filing fee is $200.00. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

[illegible] Director.

Enclosure
DISTRIBUTION:

Each Small Tract appellant (Certified Mail)
Roger C. Donahue, Attorney for Gregory Marr (Certified Mail)
Gregory E. Marr (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MHS

APPENDIX "A"

Reuben Silver	Sacramento	059080
Glen L. Gillson		059081
Lottie Gage		059082
Lawrence F. Winslow		059083
Stanley G. Atwood, Jr.		059087
Ray Ragland		059088
Charles E. Gooch, Jr.		059089
Estine M. Bordelon		059090
Guy M. Toutain		059095
Alda L. Haselbusch		059097
Storm C. Espensen		059098
George L. Bradley		059099
Tom G. Rogers		059100
James R. Brake		059101
Marion S. Stevens		059284
Max Wasserman		059284
Alan W. Gold		059286
Harvey B. Braxton		059526
Michael J. Giuliano		059984
Rosemary Weifert		059985
Philip C. Weifert		059986
John R. Freeman		059987
John R. Kailer		059988

Wade B. Graham	060160
Stanley E. Root	060161
Andrew H. Koby	060216
Clara C. Smith	060238
Philipp Smidt Henson	060301
Albert Loeschen	060307
Allen Loeschen	060308
Donald G. Oswill	060321
Victor E. Fereira	060466
Lou Hazel Waldrip	061501
Jesse James Waldrip	061504
Thomas Dwight Woldruff	061569
Minnie Faye Keen	061570
Thomas Melvin Smith	061572
Lawrence Eugene Wheeler	061576
R. J. Keen	061577

Appealed

affirmed - A-28747
4-3-1962

LD

DOCKET FILES

HOMESTEAD * 2 Application
* 3 Classification

RULES OF PRACTICE * 6 Hearings

A homestead entry application is properly rejected where the land applied for is more valuable for forest production than agricultural use and the land has been classified for retention in Federal ownership for a sustained yield forest management plan.

Mere assertions on appeal do not raise issues of fact which require a hearing for determination, and the request for a hearing will be denied.

Thomas L. Browning, Sacramento 059502 (December 19, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 059502
5.04g

December 19, 1960

Certified Mail
Return Receipt Requested

DECISION

Thomas L. Browning	:	Homestead Application

Decision Affirmed

Thomas L. Browning has appealed from the decision of the Manager, Sacramento Land Office, dated July 27, 1960, which rejected his homestead application for the S½SW¼SW¼, S½SE¼SW¼, SW¼SE¼ Sec. 20 and the NW¼NE¼, NE¼NW¼ Sec. 29, T. 17 N., R. 9 E., M.D.M., California. The application was rejected for the reason that subject land had been classified as valuable for retention in Federal ownership as an integral part of the Nevada County Forest Management Unit, also as a part of the proposed Round Mountain Timber Sale, and at present it serves a multiple public use for hunting and recreational purposes.

The record discloses that appellant filed his application on August 11, 1959, pursuant to which the land in issue was carefully examined by trained Bureau personnel. Their examination report dated May 24, 1960, shows that subject land is an integral part of the Nevada County Forest Management Unit and is also a part of the proposed Round Mountain Timber Sale. The report further states that the land sought is presently serving a multiple public use for hunting and recreation.

In his statement of reasons the appellant contends in substance that the Manager's decision is inconsistent with Federal laws and is based on erroneous and mistaken knowledge of the facts surrounding the actual use and condition of the land involved. He asserts that the classification for retention of subject land in Federal ownership is inconsistent with the facts because it is more valuable for agricultural purposes and is not suited for or being used for forest products and he requests a hearing on his appeal.

The appellant cites no authority to support his contention that the classification is contrary to Federal laws, neither does he submit any evidence to substantiate his assertions that the decision is inconsistent with the facts.

An application for homestead entry is properly rejected where it appears that the land applied for is more valuable for forest production than agricultural use, and it has been classified for retention in Federal ownership for a sustained yield forest management plan. Floyd J. Brown, A-27684 (September 22, 1958). Furthermore, it is well established that the classification of land will not be disturbed in the absence of positive evidence that the classification is erroneous, Mary Refugio Jackson et al., A-27236, A-27237 (February 29, 1956). Moreover, the assertions on appeal do not raise issues of fact which require a hearing for determination, cf. Lewis Sanford Cass, A-27742 (January 14, 1959). The appellant's request for a hearing is therefore denied.

Accordingly, the Manager's decision is affirmed.

Thomas L. Browning is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:
John B. Piccolo

Enclosure

DISTRIBUTION:

Leo J. Todd, Attorney for appellant (Certified Mail)
Thomas L. Browning (Regular Mail)
Lands Staff Officer
Appeals List No. 1
RLE

DOCKET FILES

LD

HOMESTEADS * 3 Classification

SMALL TRACTS * 3 Classification

ADJUDICATION * 7 Fees and Payments

A classification adverse to homestead entry will not be disturbed in the absence of positive evidence that the classification is erroneous.

Lands classified for disposition under the Small Tract Act are segregated for disposition under that act only.

An application for homestead entry is properly rejected for failure to pay the required fees and commissions.

Peter L. King, Los Angeles 0167495 (December 21, 1960)

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles 0167495
5.04g

December 21, 1960

Certified Mail
Return Receipt Requested

DECISION

Peter L. King : Homestead Application

Decision Affirmed

Mr. Peter L. King has appealed from the decision of the Acting Chief, Land Adjudication Unit, Los Angeles Land Office, dated June 21, 1960, which rejected his homestead application for land described as the NW¼ sec. 34, T. 27 S., R. 35 E., M.D.M., California. The application was rejected for the reasons that the E½ of the tract was patented February 18, 1922, the W½ thereof had been classified for disposition under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 682a), and the appellant had failed to pay the required filing fees and commissions with the homestead application.

The record shows that B.O. Robinson was issued a patent, No. 849956, February 2, 1922 for the E½ NW¼ Sec. 34, T. 27 S., R. 35 E., M.D.M., California, and that the W½NW¼ of the section was classified for small tract residential purposes by classification No. 621 dated January 15, 1960. The record further shows that the appellant filed his homestead application for the lands on May 16, 1960, without payment of the filing fees and commissions as required by 43 CFR 166.8.

The application was properly rejected for the failure of the applicant to submit the required filing fees and commissions, in accordance with the cited regulation.

In his appeal, the appellant states he wishes to relinquish any interest he may have by reason of his application in the W½NW¼ sec. 34 and he discusses the E½NW¼ sec. 34. He asserts that no adverse parties are involved as to the latter portion of the land, that eighty percent of it is tillable, that it is more suitable for farming than any other purpose and that it had only recently been classified for small tract purposes, so his appeal should be sustained. It is assumed the appellant is interested in the W½NW¼ sec. 34 which is public land. However, his statements , without any positive or substantial supporting evidence, are insufficient to establish that the classification assigned to the land is erroneous, Mary Refugio Jackson et al., A-27236 (February 29, 1956).

The determination as to which of the public land laws is appropriate for the disposition of certain land is discretionary, William John Mauro, A-27318 (July 13, 1956), and in exercising this discretionary authority the Secretary may properly consider and weigh all factors which have a bearing on the suitability of the land for use or disposal, including the effect on the public interest. Nelson A. Gerttula, 65 I.D. 225 (1957). Lands classified as suitable for disposition under the Small Tract Act are segregated for disposal under that act only. Las Vegas Sand and Gravel Co., Inc., 67 I.D. 259 (June 16, 1960).
In view of the above, the decision is affirmed.

Mr. Peter L. King is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

John B. Piccolo

Enclosure

DISTRIBUTION:
Peter L. King (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RLE

appeal to Sec
Reversed & Remanded
A-28783 1-30-62

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.
FEB 15 10 00 AM 1961
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

HOMESTEADS * 2 Applications

A homestead application for a tract of arid land, unaccompanied by the required filing fee and commissions, that fails to show satisfactory evidence of a water right and a plan of irrigation for the reclamation of the land, is properly rejected.

Ella L. Bittner, Los Angeles 0152247 (January 11, 1961)

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles 0152247
5.04g

January 11, 1961

Certified Mail
Return Receipt Requested

DECISION

Ella L. Bittner : Homestead

Decision Affirmed

Ella L. Bittner appealed from the decision of the Chief, Lands Adjudication Unit, dated August 15, 1960, which rejected her homestead application for the reasons that she did not submit the filing fee and the commissions with her application, and that she did not make a satisfactory showing that the land is susceptible of successful cultivation by irrigation.

The appellant alleges that sufficient water is available for irrigation.

The Department has held that before a homestead application, for lands to be reclaimed by irrigation, can be properly allowed the applicant must show by satisfactory evidence a water right and a plan of irrigation for the development of the land, which when carried to completion will satisfy the requirements for final proof under the homestead laws, Willard Carl Sorenson, A-27086 (April 5, 1955) and failure to so do subjects the application to rejection for this reason alone. James Etcheverry, Jr., A-27642 (August 26, 1958).

In view of the foregoing, the decision rejecting the application was proper and it is affirmed.

Ella L. Bittner is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:
Ella L. Bittner (Certified Mail)
Lands Staff Officer
Appeals List No. 1
MHS

appeal to Sec
affirmed A-29329
Ltr Dec. 5-13-63

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.

OCT 23 10 00 AM 1961

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 062022
6.05c

October 16, 1961

CERTIFIED MAIL
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DECISION

John J. and Mildred E. Dittmer : Enlarged Homestead Application

Decision Affirmed

John J. and Mildred E. Dittmer have appealed from a decision, dated March 28, 1961, rejecting their enlarged homestead application for the reason that the land had been classified for retention in Federal ownership for a sustained yield forest management plan, and because the land is definitely non-agricultural in character.

The appellants allege that the land contains only a few trees, and that no attempt has been made to reforestate the land since logging operations ceased about eight years ago. They state that maps submitted in the "middle 1800's" indicate that the section containing the subdivisions for which they have applied is agricultural land, and that the Placer County Agricultural Advisor told them that the land was suitable for their intended use, the development of a pistachio nut orchard.

The record shows that the land is a part of the Placer-Eldorado Multiple Use Management Area, for which reforestation is planned under a proposed accelerated program to bring the area back into full timber production, and that the land is, at most, marginal for any agricultural uses under present day standards.

On February 14, 1961, the Department promulgated a land conservation program which provides, in part, that public lands which are marginal for agriculture, or which are more valuable for uses other than agriculture, will not be classified for entry under agricultural development laws. Hence, unless the appellants can conclusively show that the Bureau's present classification of the land is erroneous, the rejection of their application must be affirmed.

In this respect, the Department also announced on February 14, 1961 that, where an application for public lands is rejected for reasons involving the proper classification of the land, the rejection will be sustained on appeal to the Director if the appellant does not submit positive and substantial evidence that the classification is in error. In the instant case, the appellants' self-serving declarations, supported by little or no factual data, do not meet this requirement and the rejection of their application must, therefore, be sustained.

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STATE OFFICE
SACRAMENTO, CALIF.

Accordingly, the decision appealed from is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Hon. Clair Engle, United States Senate
John J. and Mildred E. Dittmer (Certified Mail)
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Mr. Harry S. Weedberg, House Government Information Subcommittee

6-C

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Sacramento
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UNITED STATES
DEPARTMENT OF THE INTERIOR
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WASHINGTON 25, D. C.

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SACRAMENTO, CAL.
FEB 14 10 09 AM 1962

FEB - 8 1962

Homestead Application

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DECISION

Lane Vernon Foster :

BUREAU OF LAND MANAGEMENT
LAND OFFICE

Appeal From Decision of
October 27, 1961

Notice of Appeal Filed
November 24, 1961

DOCKET FILES

Appeal Dismissed

For the reason listed below your appeal to the Director, Bureau of Land Management, is hereby summarily dismissed (43 CFR 221.98):

☒ No statement of reasons has been filed in support of the appeal, and the time for filing the statement has expired (43 CFR 221.3).

☐ Your statement of reasons for your appeal (or your request for extension of time to file a statement of reasons) was filed in this office, but it was filed late. (43 CFR 221.3). The statement of reasons was transmitted to this office after expiration of the period allowed, and the delay in filing cannot be waived. (43 CFR 221.92(b)).

☐ You have not served the adverse party named in the decision appealed from with a copy of ☐ the notice of appeal, and/or ☐ the statement of reasons for the appeal, in the manner prescribed in 43 CFR 221.95. (43 CFR 221.4).

☐ Your appeal does not point out wherein the decision appealed from is believed to be in error and consequently you have failed to state reasons for the appeal, as required by the rules of practice. See Duncan Miller, 65 I.D. 292.

The dismissal of an appeal for failure to comply with the above requirements is mandatory. We have enclosed Form 4-1364 which contains the cited regulations.

You are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in enclosed Form 4-1365. 1/ If you do not appeal we will close the case and return the record to our State Director for further appropriate action. **If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.**

(Sgd.) Richard J. McCormick
Legal Assistant
~~Chief~~, Division of Appeals

Enclosures 2

1/ The adverse party to be served is: None
cc: Lane Vernon Foster (Certified Mail)
SD (California); LO (Sacramento) ✓

asking of Public Land order should be [illegible] to give NE status.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

IN REPLY REFER TO:
5.05d-1J

~~DH~~ JSH.

E.S. R-5
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MAY 8 - 1961
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LANDS

MAY 1 - 1961

DECISION

Manuel S. Rosa, Patentee	:	Redding Homestead Final Certificate No. 2345

Supplemental Patent to Issue

The application by Manuel S. Rose, Junior, which was filed on March 23, 1954, also the letter of May 25, 1960, which was considered as the application of Henry F. Rose and John Rose, and the evidence which was filed on various dates, met the requirements for the reconveyance of a portion of the patented entry under the amendment of patent information, and the issuance of a supplemental patent.

On October 31, 1896, Manuel S. Rosa made Redding homestead entry No. 3932 for lots 7 and 10 and the NW¼NE¼ sec. 30, T. 45 N., R. 7 W., M.D.M., California. Final homestead proof was made on September 16, 1901. Final certificate No. 2345 was issued on September 21, 1901, and the patent issued on September 26, 1902 (recorded here in vol. 161, page 387).

Wm Englebright Authorization PL 693-1938

The applicants stated that Manuel S. Rosa, their father, now deceased, believed the land he occupied and developed (lot 13) to be the NW¼NE¼ sec. 30. Lots 7 and 10 sec. 30, T. 45 N., R. 7 W., were correctly patented and are not changed as originally patented. The abstract of title No. 2295 by the Siskiyou County Abstract Company of Yreka, California, has been extended to June 1, 1960, to show the warranty deed of July 28, 1958, from Manuel S. Rose, Henry F. Rose and Bessie Rose, his wife, and John Rose, to the United States for the NW¼NE¼ sec. 30, T. 45 N., R. 7 W., M.D.M., California, containing 40 acres. The deed was recorded on July 14, 1959, in Siskiyou County, in volume 425, page 493.

The original patent of September 26, 1902, and its record will not be canceled, but a notation will be made in the margin of the patent record on file in the Bureau of Land Management that the supplemental

H

Cy filed D-r Memos.

2 cc sent Klamath
with covering letter,
asking if Public Land order should
be [illegible] to give NF status.

DEPT. OF INTERIOR
SACRAMENTO, CAL.

MAY 31 10 00 AM 1961

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

patent has been issued. A supplemental patent, containing a clause showing why it is issued, will be issued in the names of Manuel S. Rose, John Rose, Henry F. Rose and Bessie Rose, his wife, for lot 13 sec. 30, T. 45 N., R. 7 W., M.D.M., California, containing 36 acres, based upon Redding homestead entry No. 3932. The supplemental patent is being issued in the names of the heirs of Manuel S. Rosa, deceased, in accordance with the Departmental decision in the case of *Harris Miller* in 51 L. D. 281.

The supplemental patent will issue in the regular course of business. It will be sent to the State Supervisor of this Bureau at Sacramento, California, for notation and delivery to Mr. Manuel S. Rose, 524 Annie Street, Yreka, California.

The original patent of September 26, 1902, is being returned to Mr. Rose with the original of this decision.

The NW¼NE¼ sec. 30, T. 45 N., R. 7 W., M.D.M., the land reconveyed to the United States, is within the exterior limits of the Klamath National Forest.

William J. Dorasavage

William J. Dorasavage
Land Law Examiner

Enclosure

Copy to: Forest Service, U. S. Department of Agriculture, Washington 25, D. C. (4 copies)

appeal to Sec
affirmed A-29537 9-13-63

Sn noted

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.
MAR 12 10 00 AM 1962
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LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05e
Eureka 02210

February 28, 1962

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DECISION

Edward Brown et al. : Homestead Entry Reinstatement

Decision Affirmed

This is an appeal from a decision of the Sacramento Land Office dated November 6, 1961 rejecting the above-noted homestead entry reinstatement application because the entryman, Mr. Blevins M. Brown, [1] had informed the land office by letter dated February 28, 1914 that he was "obliged to abandon it", that a registered letter dated October 23, 1918 was sent to the entryman allowing him 30 days to show cause why the entry should not be canceled for failure to submit final proof within the statutory period, and that no reply having been made by the entryman to the notice of proposed cancellation of his entry the entry was canceled by the Commissioner of the then General Land Office by letter "C" of December 20, 1919.

The appellants, the children of Blevins M. Brown, contend, in substance, that Mr. Brown did not in fact abandon the homestead [2], that he satisfied all of the requirements except furnishing final proof, that the registered letter of October 23, 1918 was not delivered to him as he had died on January 13, 1917, that the letter of December 20, 1919 could not have been served on him since he had been deceased for nearly three years and that they as lawful heirs of the entryman, have never been served any notice concerning the land. The appellants further state that they were not made aware of "any claim to the land in question until December 1960, at which time they made diligent search to uncover their rights."

---

[1] Homestead entry Eureka 02210 was filed August 15, 1913.
[2] Appellants submitted three affidavits from individuals who knew the entryman. The affiants state, in substance, that Blevins M. Brown did the necessary work on his entry during the years 1913 through 1916.

The appellants, however, have not submitted any positive or substantial evidence to sustain their contentions that the statutory notice to entryman, Blevins M. Brown of October 23, 1918, was returned to the sender marked "DECEASED". In fact, the records contain a document entitled "Registry Inquiry", dated January 27, 1919 addressed to the Postmaster at Kenny, California, requesting information as to the disposition made of registered letter, 2181, addressed to Blevins M. Brown, and sent to the Kenny postoffice by registered mail on October 23, 1918, to which the Postmaster at Kenney replied "The letter has been delivered to Blevins M. Brown. Dated 1/21/19". The reply bears the postmark of Kenny, California, January 31 A. M. 1919. This document constitutes positive evidence that the registered parcel containing the notice of the proposed cancellation of the entry was received by someone at the address of record of Blevins M. Brown. The record contains no evidence that the envelope containing the notice was returned to the Land Office unclaimed.

The Commissioner's letter "C" of December 20, 1919 was addressed to the Eureka Land Office cancelling the entry because the entryman failed to respond to the statutory notice of Ocotber 23, 1918 and was not served on the entryman.

In the circumstances, it cannot be said that the heirs of Mr. Brown had no notice of the proposed cancellation of the entry. Furthermore, it seems unreasonable that the heirs did not have knowledge of their father's entry until December 1960, since it is indicated in the application for reinstatement of the entry, that the widow of Mr. Brown, Birdie P. Brown was cognizant of the entry, but made no claim to it prior to her death in the early 1920's.

It is concluded, therefore, that the appellants have not presented any factual data or other evidence that would justify the reinstatement of the homestead entry of their father. Moreover, in similar circumstances, it has been ruled by the Department that the principles of orderly administration militate against the resurrection of such ancient matters. *Robert Ward Morgan*, A-26499 (December 10, 1952); *John C. Carter et al.*, A-26545 (December 24, 1952).

Accordingly, the decision appealed from is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure
(Distribution on pg. 3)

DISTRIBUTION:

Mr. Lawrence F. Salisbury (Attorney for Appellants) (Certified Mail)
Mr. Edward Brown (Regular Mail)
Mr. Richard S. Brown (Regular Mail)
Mrs. Katherine A. Moreland (Regular Mail)
Mrs. Vecta Lane (Regular Mail)
Mrs. Louise Glenn (Regular Mail)
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JBJ

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 047098

H

March 16, 1962

DECISION

William M. Wallace, Jr. : Homestead Application

Decision Vacated
Case Remanded

William M. Wallace has appealed from a decision of the Manager, dated October 23, 1961, rejecting his homestead application and holding for allowance the state exchange application Sacramento 049949. The Manager indicated that the land applied for by Mr. Wallace is not suitable for agricultural purposes and that it would be more in the public interest to exchange it for the lands offered by the State of California.

An examination of the case record discloses that the Manager failed to give due consideration to the particular characteristics of the applied for land and the circumstances under which the appellant's homestead application was filed.

Accordingly, his decision is vacated and the case record is remanded to him, through the Bureau's California State Director, for further consideration and appropriate action.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

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State of California, State Lands Division (Regular Mail)
SD (California)
LO (Sacramento)
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Division of Lands and Recreation
LLM

appeal to Sec
affirmed - ltr Decision DOCKET FILES
A-29662 7-1-63

DEPT. OF INTERIOR
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MAY 29 2 24 PM 1962

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LAND OFFICE

UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 057457
057577

May 18, 1962

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DECISION

Felix Kerrer	:	
William H. Lehman	:	Homestead Application
	:	

Decision Affirmed

The above-named parties have appealed from a decision of the Manager, dated November 1, 1961, rejecting a large number of public sale, small tract, homestead, and recreation and public purposes applications. The appellants' homestead applications were rejected by the decision. The Manager held that it would not be in the public interest to transfer to title to any of the land described in the various applications until a detailed study of all the public lands in the area can be made. In this connection, he stated that the Bureau is presently engaged in an evaluation and inventory of the National Land Reserve to determine its potential uses, and that until this inventory and evaluation is completed no disposal of public lands will be made unless it is clearly shown that such disposition will serve a sound public purpose. The Manager reported, in addition, that the lands in the area may be potentially valuable for recreation in connection with a reservoir which will be created by the planned Auburn Dam, and that the lands are currently being managed for timber production, recreation, wildlife, watershed protection, and other uses.

In their appeals, the applicants state, in essence, that the inclusion of several different kinds of applications in the Manager's decision and the statements made therein show that their applications were not given the individual consideration to which they were entitled; that the land they have applied for is suitable for development under the homestead laws, which laws insure the proper development of public lands; and that it would be more in the public interest to permit the private development of the lands, thereby benefiting the local economy, than to retain them for general recreational uses.

As the Manager has determined that all of the applications included in his decision should be rejected for the reason that it would not be in the public interest to dispose of any of the public lands applied for at the present time or in the foreseeable future, the appellants were required to show, through the submission of substantial affirmative evidence, that his conclusion is incorrect. Cf. John Hayward Dill, A-28467 (February 14, 1961). The appellants' unsupported statements of opinion do not, however, satisfy this requirement..

Accordingly, the decision of the Manager is affirmed.

Each of the appellants is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

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appeal to Sec
Dismissed A-29715
10-31-63
JHC

See Supp 11-1-63

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Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 046481

June 25, 1962

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DECISION

Harry R. Boys : Enlarged Homestead Entry

Decision Affirmed

Harry R. Boys has appealed from a decision, dated April 23, 1962, rejecting the final proof he submitted in connection with his above-noted entry, allowed April 12, 1957. 1/ The decision held that the final proof document was insufficient, since it made no mention that any crop was seeded on the cultivated land other than native grasses.

The pertinent regulation (43 CFR 166.23) reads as follows:

> "(a) Cultivation of the land for a period of at least two years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage of a crop other than native grasses. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing seed) where that manner of cultivation is necessary or generally followed in the locality." (Emphasis Supplied)
>
> "(b) During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year and until final proof."

1/ The records show that by a decision dated April 20, 1961, the Manager of the Land Office erroneously held that the time fixed by law for the submission of the final proof in connection with the subject entry expired on April 12, 1961. The statutory life of an enlarged homestead, within which final proof must be submitted is five years, the same as in ordinary homesteads the only exception being in the case where the enlarged homestead entryman submits proof in connection with an additional, enlarged homestead entry for contiguous lands and the original enlarged homestead entry at the same time. See 43 CFR 1954 ed., 167.10(d). See also *Scribner v. Love*, 53 I.D. 23 (1930). The statutory life of the instant entry, therefore, did not expire until April 12, 1962.

The appellant asserts that he summer fallowed the land in 1960 with the aim of cropping Sudan grass and alfalfa in 1961 but that due to extremely poor moisture conditions it was obvious that cropping of either Sudan or alfalfa would be a failure. He contends that by following the methods used by others in the locality, that he complied with the requirements of the regulation for cultivation.

The appellant did not make application for reduction of the area of cultivation because of his inability to comply with the regulation, if as he contends, moisture was deficient for seeding Sudan and alfalfa. (See 166.40). On appeal he has merely claimed that the years 1959, 1960 and 1961 were unusually low in rainfall without submitting a showing which would controvert a statement in the record that rainfall in 1961 did not fall significantly below the mean to be expected. 2/ Since the appellant has made no apparent attempt to produce any crops on the land during the life of his entry, as is evidenced by his own statements, his final proof was properly rejected.

Accordingly, the decision appealed from is affirmed.

Harry R. Boys is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

John B. Piccolo
Acting Chief
Division of Appeals

Enclosure

2/ Climatic summaries by weather stations in the area reveal a wide variance in amounts of precipitation in differenet localities during this period.

DISTRIBUTION:

Mr. Harry R. Boys (Certified Mail)
Division of Lands and Recreation
SD (California)
LO (Sacramento)
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6.05c
Sacramento 058365

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LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DOCKET FILES

October 12, 1962

DECISION

George E. Watson : Homestead Application

Decision Affirmed

George E. Watson has appealed from a decision, dated July 19, 1962, rejecting his above-noted homestead application for the reason that the land involved is unsuitable for homestead entry because; (1) the soil is nonagricultural, being a weathered, granular, granite soil of low fertility, (2) neither the subject land nor adjacent land has any history of farming and no crops have been grown in the area, except limited timber, and (3) adverse topography and a lack of water precludes economic farming of any type.

The appellant asserts, in substance that, (1) although there is no extensive farming in the area some home garden vegetables and fruit trees have done well with the aid of a little water and he believes that he can raise pasture and produce enough feed on the land for a large number of sheep and cattle, (2) he had the soil tested some time ago by the Chico State College and found that it has a high content of humus and nitrogen, important to any plant growth, (3) a well driller who checked the land assured him that a well at about 400 feet in depth would furnish plenty of water to irrigate by a sprinkler system, and (4) he feels that his application should be allowed.

The classification of the land was based upon a field report dated July 10, 1962. The report further shows that subject land is covered by a dense growth of brush, Oak and Digger pine, except for one small open grass area not exceeding 1 acre. The soil is termed a decomposed granite. It is light, porous, granular and varies in depth from 1 to 6 feet. It erodes easily, is of low humus content, and is of very low fertility. No water originates on the land and there is no practicable way of bringing water to the land. The land varies in elevation from 1,600 to 1,850 feet with slope variations of from minus 13 to 40%.

The appellant has not presented any substantial, positive evidence which would indicate that the classification action taken is in error. Where land applied for under the homestead law is classified as unsuitable for agricultural production because of rough topography, steep slopes, poor soils and lack of evidence of an adequate supply of irrigation water, the classification will not be disturbed in the absence of substantial, positive evidence that the classification is erroneous. Tim Jim Griffith, A-28124 (January 15, 1960); John Hayward Dill, A-28467 (February 14, 1961).

Accordingly, the decision appealed from is affirmed.

George E. Watson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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In reply refer to:
6.05c
Riverside 01813

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 30, 1962

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DECISION

Rudy T. Zamora : Homestead Application

Decision Affirmed

Rudy T. Zamora has appealed from a decision, dated September 12, 1962, rejecting his above-noted homestead application for the E½NW¼, sec. 28, T. 2 S., R. 4 W., SBM, California, for the reason that the Land Office records show that the land has been patented and is no longer under the jurisdiction of the Bureau.

The appellant contends that a close examination of the records in the Land Office revealed, to the best of his knowledge, that no patent has been issued on subject land.

A careful review of the record verifies the status of the land as reported in the decision from which the appeal is taken. On March 7, 1892, a patent, No. 4384, was issued to George L. Bush for the N½NW¼, SE¼NW¼, sec. 28, T. 2 S., R. 4 W., SBM, California which includes the land in question.

It is well established that where public land is patented the Department no longer has jurisdiction over it. Tennes J. Aarstad, A-28437 (September 6, 1960), and a homestead entry application for such land must be rejected. Cf. Florida State Road Department, A-28914 (June 21, 1962).

Accordingly, the decision appealed from is affirmed.

Rudy T. Zamora is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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JHK

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

In reply refer to:
6.05c
Sacramento 051979

November 30, 1962

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DECISION

Hinkle Johns	:	Homestead Application
	:	

Decision Affirmed

Hinkle Johns has appealed from a decision dated August 8, 1962, rejecting his homestead application for the reason that certain lands which include the parcels sought by the appellant, have been withdrawn from application and disposition under the public land laws by Public Land Order 2693, effective June 12, 1962 (27 F. R. 5608). These lands have been designated as a National Cooperative Land and Wildlife Management Area for management by this Bureau in the development, conservation, utilization and maintenance of their natural resources, including their recreational and wildlife resources.

The appellant offers on appeal only the assertions that there is plenty of land to satisfy the State Department of Fish and Game requirements other than the lands embraced in his homestead application and, for reasons stated, the lands sought would make a suitable and desirable homestead location for his purposes. In effect, he urges the matter be reconsidered.

The record verifies the status of the lands as reported in the decision appealed from.

The suitability of the land for homestead is not at issue in this appeal. The appellant's application cannot be allowed as a matter of law because the land is withdrawn from entry. Amy B. Croft, A-28855 (June 26, 1962), and the case cited therein. The mere filing of a homestead application gives the applicant no rights to the lands covered by the application. Lewis Lafon Gourley, A-28497 (November 6, 1961).

Because the lands embraced in the appellant's homestead application are within the area withdrawn by Public Land Order 2693 they are not subject to disposition, and the rejection of the homestead application was proper.

The decision appealed from is affirmed.

Hinkle Johns is allowed the right of appeal to the Secretary of the Interior, in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
Mr. Hinkle Johns (Certified Mail)
Division of Lands and Recreation
SD (California)
LO (Sacramento)
Case File
Perm. File
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Attorneys' Reading File
MAG

appeal to Sec
affirmed A-30073
6-1-64

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.
JUN 7 10 00 AM 1963
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Riverside 01794

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 28, 1963

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

James R. Steere : Homestead Application

Decision Affirmed

James R. Steere has appealed from a decision, dated January 17, 1963, rejecting his homestead application for the following reasons:

1. The applicant is not qualified to make a homestead entry because he admits on one of the application forms, owning more than 160 acres of land.
2. The application is deficient, in that the applicant has not submitted an adequate irrigation plan or a detailed cost estimate as required by the regulation 43 CFR 296.4.
3. The land is not suitable for agricultural uses, because it is too steep, rough, and rocky and the precipitation is not sufficient to support an economical crop.

The appellant alleges as follows:

1. ". . .I made an error on one copy of the application form as I have never used my homestead rights."
2. Water is available from the water district.
3. The land is "typical rolling, hilly land suitable for agriculture," "especially avocado, citrus and macadamia nut trees."

The appellant submitted a report from a land consultant who states that, in his opinion, "60% of the area can be used for avocado planting."

The appellant's first allegation is not responsive. The application was rejected, in part, because the applicant admitted owning more than 160 acres of land and not whether he had previously used his homestead rights.

There is no substantial, positive evidence in the case file, such as a detailed cost estimate, showing that agricultural development of the land is feasible. In the absence of such evidence, the report of the Bureau's land examiners is controlling. Walter G. Allen, Jr. A-28921 (September 21, 1962); Paul Edward Mulvaney, A-28828 (October 10, 1962).

Avocados citrus and macadomia nut trees are not shown to be proven crops in this area and the appellant has not shown that the growing of such crops would be profitable. This he is required to do and in the absence of such proof, the allegation is merely a self-serving statement that cannot be accepted as evidence, United States and Salt Lake City v. Wayne E. Watrons, A-27759 (May 15, 1959).

Moreover, the refusal to classify the land for an agricultural entry is in conformity with the Bureau's land conservation program that public lands which are marginal for agriculture will not be classified for entry under the public land agricultural development laws.

Accordingly, the decision is affirmed.

James R. Steere is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington 25, D.C. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
James R. Steere (Certified Mail)
Division of Lands and Recreation
Appeals List No. L
MHS

appeal to Sec
affirmed A-30084
3-12-64

DOCKET FILE

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JUN 26 1963
SACRAMENTO
LAND OFFICE

In reply refer to:
6.05c
Riverside 02624

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

June 20, 1963

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Gene W. Reed : Homestead Application

Decision Affirmed

Gene W. Reed has appealed from a decision, dated March 1, 1963, rejecting his homestead application for 10 acres of land, filed on February 19, 1963. The application was rejected for the following reasons:

1. The lands have been embraced within a first form reclamation withdrawal since July 17, 1902.

2. The land description is not adequate to identify the land.

The appellant does not dispute the reasons stated in the Land Office decision rejecting the application, but he alleges, in his statement of reasons for appeal that he has been paying county taxes on the land since 1957, made many improvements on the land, and plans to continue to live upon the land and utilize it for a profitable truck-farming operation.

The appellant has, in effect, been told that he is prohibited from entering upon the applied-for public land. Nevertheless, he states that he plans to remain on the land and conduct a private business thereon.

The filing of a homestead application gives an applicant no rights in the land covered by the application, Lewis Lafon Gourley, A-28497 (November 6, 1961). Nor, does it constitute an authorization to enter or settle upon the applied-for land. Arthur Halsted, A-27298 (May 21, 1956). Therefore, Reed is not authorized to continue his occupancy upon the land pending the final outcome of his case on appeal.

Moreover, there is nothing in the case record warranting consideration of this matter under the color-of-title act of December 22, 1928, as amended (43 U.S.C. 1068, 1068a).

Accordingly, the decision is affirmed.

Gene W. Reed is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington 25, D.C. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
Gene W. Reed (Certified Mail)
Division of Lands and Recreation
Appeals List No. 1
MHS

DOCKET FILES

In reply refer to:
6.05c
Sacramento 057641

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 24, 1963

DECISION

John Edward Oblizalo : Homestead Application

Decision Affirmed

The above-named party has appealed from the decision of the land office at Sacramento, California, dated May 17, 1962, rejecting his homestead application for the reason that the land was not classified as suitable for homestead because of its value for public recreation and good stand of merchantable timber.

The appellant contends on appeal, among other things, that (1) the land is suitable for agricultural development, and (2) it would not be wise to classify this land for recreational use since it is in the middle of an agricultural area.

Section 7 of the Taylor Grazing Act, as amended (43 U.S.C., 1958 ed., sec. 315f), authorizes the Secretary of the Interior, in his discretion, to examine and classify lands which are more valuable or suitable for the production of agricultural products than for grazing purposes. The authority thus vested in him, or his delegate, is one to be exercised wholly in his discretion. Furthermore, it is the express policy of the Department of the Interior to make public lands valuable for public recreational purposes available to the general public and not to pass title thereto into the hands of private individuals. Cf. Roscoe T. Schafer, A-28131 (August 27, 1959).

A review of the record indicates that Bureau personnel, in examining the lands, ascertained all relevant and material facts bearing on character and use value, and came to a considered and informed judgment as to the unsuitability of the land for homestead purposes. The appellant has submitted no substantial or persuasive evidence that the Land Office action was based on error of fact or judgment.

We conclude the land office rejection of the application to be consistent with the facts, and in the public interest and is entirely proper.

Therefore, the decision appealed from is affirmed.

This decision constitutes a final administrative determination of the Department in the matter. 43 CFR 221.31.

Charles H. Stoddard
Director

Approved: October 4, 1963

John A. Carver Jr.
Assistant Secretary of the Interior

DISTRIBUTION
Hon. Harold T. (Bizz) Johnson
John E. Oblizalo
Appeals List No. 1
CLH

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OCT 17 1963

DOCKET FILES

EPT. OF INTERIOR
ACRAMENTO. CAL.

SEP 10 2 06 PM 1963

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Riverside 02722
02750

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

August 20, 1963

DECISION

Norbert Walter Buegeler : Homestead Applications
Gregory L. Walters :
:
:

Decisions Affirmed

The above-named persons have appealed from separate decisions, dated April 16, 1963, rejecting their homestead applications filed in March 1963 for the reason that the applied-for lands are embraced in First Form Reclamation Withdrawals of September 8, 1903 and October 16, 1931. The decisions also state that pursuant to the provisions of departmental regulation 43 CFR 230.12, lands withdrawn under first form cannot be entered, selected, or located in any manner so long as they remain so withdrawn, and all applications for such entries, selections, or locations presented after the date of such withdrawal should be rejected and denied.

The appellants have submitted no evidence, in their statements of reasons for appeal, showing that the applied-for lands are not withdrawn under the first form, or that the mandatory language of the departmental regulation requiring the rejection of their applications is not applicable to their cases.

The Department has consistently held that persons who avail themselves of the privilege of submitting their grievances for adjudication are required to assume the burden of pointing out clearly the precise grounds upon which reversal is sought. United States and Salt Lake City v. Wayne E. Watrons, A-27759 (May 15, 1959); Donald R. Simmons, A-28581 (July 14, 1961). The appellants have made no showing.

The Land Office decisions are correct. Therefore, they are affirmed.

This decision constitutes the final determination of the Department in these matters. See 43 CFR 221.3.

E E Remington
Acting Assistant Director

Approved: September 4, 1963

J. A. Carver Jr.
Assistant Secretary of the Interior

DISTRIBUTION:
Norbert Walter Buegeler
Gregory L. Walters
Division of Lands & Recreation
Appeals List No. 1
MHS

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SACRAMENTO
LAND OFFICE

appeal to be
affirmed A-30161
11-4-64

DOCKET FILES

In reply refer to:
6.05c
Los Angeles 0121927

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

August 29, 1963

Certified Mail
Return Receipt Requested

DECISION

Bruce W. Morring	:	Homestead Entry
	:	
	Decision Affirmed	

Bruce W. Morring has appealed from a decision of the Riverside Land Office dated May 20, 1963, rejecting his homestead final proof and cancelling his entry for the reasons that:

1. The entryman had not irrigated the crops he attempted to grow during the life of the entry.

2. A well was not drilled on the land until October 1962.

The entry was allowed on May 23, 1957 and it expired on May 22, 1962.

The appellant, through his attorney, admits that the Land Office decision is correct "on a purely legal basis" but he alleges that Mr. Morring is entitled to equitable relief because of the expenses he incurred in drilling the well and making other improvements.

The appellant admits that he drilled the well after the entry had expired. However, he alleges that the well was drilled in good faith, in the belief that his entry had been extended until May 1963.

The record shows that the well was drilled on the land after the entryman was notified by a decision, dated June 18, 1962, that the statutory life of the entry had already expired, and he was allowed 30 days in which to file notice of his intention to file final proof. Therefore, the allegation that the well was drilled in good faith is without merit.

The appellant alleges ignorance in believing "that he could cultivate the land by the use of natural rainfall." The case record contains a letter from Mr. Morring, which was received in the Land Office on February 17, 1955, stating that he "would make preparations to develop a water well." Therefore, the allegation of ignorance is refuted by the record.

The Department has held that the cultivation of arid land, under the homestead laws, must of necessity include the application of such amounts of water as may be reasonably required to produce a crop. United States v. Charles E. Stewart, A-28966 (September 25, 1962). The appellant knew or should have known that there was not sufficient rainfall in the area to produce a crop. Therefore, he has not complied with the mandatory cultivation requirements.

One who seeks equitable relief must have, under departmental regulation 43 CFR 107.2, substantially complied with the law. There can be no substantial compliance where the entryman fails to perform the mandatory cultivation requirements. Gerald C. Chisum, A-28295 (June 7, 1960). Moreover, the Director is not vested with any equitable powers which authorize him to waive the mandatory cultivation requirements of the law. Morris Killen v. Hubert Lee Davidson, Jr., A-28871 (August 8, 1962). Consequently, the record is clear that the entryman's failure to drill a well and perform the required cultivation by irrigation, during the life of the entry, was not the result of ignorance, mistake, accident, or obstacle over which the entryman had no control. Therefore, he does not qualify for any relief by equitable adjudication. George Arnold Jurn, A-28948 (August 16, 1962).

Accordingly, the final proof was properly rejected and the homestead entry was properly cancelled.

The decision is affirmed.

Bruce W. Morring is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION
Carroll and Anderson (Certified Mail)
Bruce W. Morring
Hon. Gordon L. McDonough
Division of Lands and Recreation
Appeals List No. 1
MHS

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.
OCT 14 10 09 AM 1963
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Riverside 02975

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

September 10, 1963

DECISION

George F. Walters : Homestead Application

Decision Affirmed

George F. Walters has appealed from a decision of the Riverside Land Office, dated May 3, 1963, rejecting his homestead application for the reason that the land sought is embraced in a First Form Reclamation Withdrawal and is not subject to homestead entry.[1]

In his statement of reasons for appeal the appellant challenges the propriety of keeping these lands in a withdrawal status, but he does not deny that the lands are withdrawn from entry. Thus the appellant has not shown that the decision appealed from is in error.

Therefore, the decision is affirmed.

This decision constitutes a final administrative determination in this matter. See 43 CFR 221.31.

Hoffman
Assistant Director

Approved: September 25, 1963

John A. Carver Jr.
Assistant Secretary of the Interior

DISTRIBUTION:
George F. Walters
Division of Lands & Recreation
Appeals List No. 1
MHS

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[1] A prior homestead application (L.A. 0140698) filed by Mr. Walters for the same land was rejected for the same reason. George Francis Walters, A-27798 (December 23, 1958).

Appeal to Sec dismissed A-30176 1-15-64

DOCKET FILES

T. OF INTERIOR
RAMENTO, CAL.
SEP 26 10 09 AM 1963
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Riverside 02817

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

September 19, 1963

Certified Mail
Return Receipt Requested

DECISION

Donald H. Jaeger : Homestead application

Decision Affirmed

Donald H. Jaeger has appealed from a decision of the Riverside Land Office dated May 1, 1963, rejecting his above-noted application because the land was not suitable for agricultural production and there was not an adequate water supply for irrigation. The decision also held that the land had potential for public recreational uses.

Mr. Jaeger contends on appeal, among other things, that (1) there is some highly desirable agricultural land on the south 40 acres, (2) the land is suitable for avocado and citrus orchards, (3) there is adequate water for irrigation of the land, (4) the land is above the highwater line of any reservoir that may be built in the area, and (5) the slope is too steep for either camping or parking of boats.

The United States Geological Survey topographical map of the area submitted as part of the report of field examination, shows topography of the subject land to be very steep and rough. Any disturbance of the surface of such land would only lead to wind and water erosion hazards.

The Department has held that the classification of land applied for under the homestead law as unsuitable for agricultural use because of * * * excessive slopes which permit ready erosion, will not be disturbed in the absence of positive evidence that the classification is erroneous. John G. Gibbs, A-27855 (February 19, 1959).

Moreover, the subject land is within the area of influence of the authorized multiple purpose DeLuz Reservoir. The land, therefore has definite public recreational potentials. It is not in the public interest to dispose of such land.

A review of the record indicates that Bureau personnel, in examining the land, ascertained all relevant and material facts bearing on its character and use value, and came to a considered and informed judgment as to the unsuitability of the land for homestead purposes. The appellant has submitted no substantial or persuasive evidence that the Bureau's action was based on error of fact or judgment.

It is concluded that the Bureau's rejection of the application was consistent with the facts, and was entirely proper.

Accordingly, the decision appealed from is affirmed.

Donald H. Jaeger is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
Donald H. Jaeger (Certified Mail)
Division of Lands & Recreation
Appeals List No. 1
CLH

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.
OCT 14 10 00 AM 1963
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Riverside 03145

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

October 3, 1963

Certified Mail
Return Receipt Requested

DECISION

Joseph E. Camp : Homestead Application

Decision Affirmed

Joseph E. Camp has appealed from a decision of the Riverside Land Office dated June 21, 1963 rejecting his application for homestead entry because the land could not be classified as suitable for agricultural development due to the high content of alkali and boron in the soils and available irrigation water. The decision further held that the land, in part a dry lake bed, was suitable for development under the Recreation and Public Purposes act as a "hot rod" race track or a glider field.

The appellant contends on appeal, among other things, that (1) the Land Office action is condemnation of private property without proper compensation; (2) the land is suitable for crop production; (3) it is totally unsuited to "hot rod" racing or glider flying because of the high temperatures; (4) a default [sic] cuts the salt water off from the lake and there is fresh water on the subject land; (5) soils on the subject land have no characteristics of those on the lake bed, but are soft, rich and sandy and; (6) there is already a well on the land that will produce 350 GPM of fresh water.

A careful review of the record reveals that the soils are a sandy loam to a fine silt. A residue of salt covers almost the entire surface of the land. The land is desert in character and any agricultural development would require the use of underground water. The available underground water supply is mineral in character and would be harmful to domestic crops. Approximately five acres of the land consists of a lake bed known as El Mirage Dry Lake.

As to appellant's first contention, an applicant acquires no rights to land prior to allowance of an application. 43 CFR 296.5. Furthermore, the Department has held that land is properly classified as unsuitable for homestead entry where crops cannot be grown without irrigation and where saline characteristics of the soil and the water available for irrigation are unsuitable for the successful production of crops * * *. Max J. Curtis, A-28472 (July 17, 1961).

The appellant has submitted no substantial or persuasive evidence that the classification of the land as unsuitable for homestead entry is in error. In the absence of such evidence, the classification will not be disturbed.

Accordingly, the decision appealed from is affirmed.

Joseph E. Camp is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Dale E. Zimmerman
Chief, Division of Appeals

Enclosure

DISTRIBUTION
Joseph E. Camp (Certified Mail)
Division of Lands and Recreation
Appeals List No. 1
CLH

appeal to Sec
affirmed A-30193 (ltr)
5-6-64

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.
NOV 4 10 00 AM 1963
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Riverside 02652

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

October 30, 1963

Certified Mail
Return Receipt Requested

DECISION

Floyd Graham : Homestead Application

Decision Affirmed

Floyd Graham has appealed from the decision of the Land Office at Riverside, California, dated May 17, 1963, rejecting his above-noted Sec. 2289 R.S. homestead application. The reason for rejection was that the lands were located in a critical underground water basin area where the present rate of withdrawal exceeds the rate of recharge; and that additional withdrawal of water from the aquifer would endanger the water supply of existing users, which would not be in the public interest. The decision held that the lands were, accordingly, not classified as suitable for agricultural development.

On appeal the appellant's contentions consist of an attack upon the integrity of the field examiner and upon his interpretation of several Geological Survey Bulletins used in arriving at his determination that the land is unsuitable for agricultural development. The appellant also contends that the water supply of the basin is unknown and that the recharge is far greater than that estimated by various authorities. (Underscore supplied.)

The record reveals that the lack of an adequate irrigation water supply of a quality suitable for crop production is the limiting factor for agricultural development. Much of the water is saline in character, or tends to become saline as heavy pumping continues. The record further shows that soils are subject to severe wind erosion once the native vegetative cover is disturbed. The Department has consistently held that it is proper to classify as unsuitable for homestead entry land that is lacking * * * a feasible supply of irrigation water. Fred L. Beardon, A-28971 (May 28, 1962).

Section 7 of the Taylor Grazing Act, as amended (43 U.S.C., 1958 ed., sec. 315 f.), authorizes the Secretary of the Interior, in his discretion, to examine and classify lands which are more valuable or suitable for the production of agricultural crops than for grazing purposes. The authority thus vested in him, or his delegate, is one to be exercised wholly in his discretion.

A review of the record indicates that Bureau personnel, in examining the land, ascertained all relevant and material facts bearing on its character and use value, and came to the considered and informed judgment as to the unsuitability of the land for agricultural entry. The appellant has submitted no positive or persuasive evidence that the rejection of the application was based on error of fact or judgment. Accordingly, the decision of the Land Office is affirmed.

Bureau records further show that Mr. Graham had a previous desert land entry, Nevada 06388, which was canceled for reasons other than those beyond his control, Floyd Graham, Riverside 01808 (May 17, 1963), from which no appeal was taken to the Director. Mr. Graham's present application is also subject to rejection because he has not made the showing required by 43 C.F.R. 166.76 (a) through (f).

Irrespective of this issue, however, it has been consistently held that the classification of public land will not be modified unless shown to be erroneous through the submission of substantial affirmative evidence. Cf. Dorothy Gussie Myers, A-28559 (September 13, 1961).

Floyd Graham is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION

Floyd Graham
Appeals List No. 1
Division of Lands & Recreation
CLH

appeal to Sec
affirmed A-30251 (ltd)
5-19-64

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.
JAN 23 10 00 AM 1964
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Riverside 03294
January 16, 1964

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Lillie Dale King : Homestead Application
:
:
:

Decision Affirmed

Lillie Dale King has appealed from a decision of the Land Office at Riverside, California, dated August 9, 1963, rejecting her above-noted homestead application for the reason that a field examination indicates that it would not be proper to classify the applied-for-lands for homestead entry because the lands have a higher and better use for grazing, as a wildlife habitat, and for recreation.

The record shows that the lands involved are included in a withdrawal application, Los Angeles 0166694, filed by the Fish and Wildlife Service, Department of the Interior, on February 12, 1960. The withdrawal application, which has been properly noted on the records in the land office, is awaiting action.

Departmental regulation 43 CFR 295.11(a) provides that the noting of the receipt of a properly filed application for the withdrawal of lands in the tract books or on the official plats maintained by the Land Office temporarily segregates such lands from entry to the extent that the withdrawal applied for, if effected, would prevent such disposal. To that extent, action on all subsequent applications respecting such lands will be suspended until final action on the application for withdrawal has been taken.

While the cited regulation was intended to preclude any disposal inconsistent with any possible withdrawal of the land as proposed, it was not designed to delay rejection of conflicting applications which were defective on their face, or which in any event must be rejected for the reason that the land cannot be classified as suitable for the purpose application was filed.

It has been determined by physical examination that the land in the instant case is not suitable for agricultural development because the extremely rough terrain, shallow soils, and questionable water supply, indicates that the lands, at best, are marginal for agriculture. Further, the examination revealed that the highest and best use of the land involved is for grazing, wildlife habitat and recreation.

The appellant contends that as far as developing water on and agriculture use of the land, such would attract more wildlife and she intends to make it a wildlife sanctuary. She asserts that the smallness of the area makes it unsuitable for recreational purposes. The appellant also claims that there is an abundance of fruits, grapes, and garden vegetables grown on ranches in the area and that the rough terrain shallow soils and altitude of the land are desirable rather than objectionable; and, she has been assured that there is an adequate underground water supply available.

The appellant, however, has not submitted any substantial or positive factual evidence to support her allegations, or a showing that the classification of the land as more suitable for grazing, wildlife habitat, and recreation than for agricultural development is in error. Therefore, the classification will not be disturbed. Cf. Lewis W. Shamel et al., A-28943 etc., (September 20, 1962).

Accordingly, the decision appealed from is affirmed.

Lillie Dale King is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240, and the filing fee will amount to $5. In taking an appeal there must be in strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving by presenting positive and substantial evidence wherein the decision is in error,

Dale E. Zimmerman

Chief, Division of Appeals

Enclosure

DISTRIBUTION:
Lillie Dale King (Certified Mail)
Hon. Harry R. Sheppard, House of Representatives
Division of Lands and Recreation
Appeals List No. 1
RLE

DOCKET FILES

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

IN REPLY REFER TO:
6.05c
Sacramento 074181

Homestead Application

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 MAY 18 AM 10 00

MAY 15 1964

Certified Mail
Return Receipt Requested

DECISION

Irving C. Elliott : Appeal From Decision of February 14, 1964
: Notice of Appeal Filed March 18, 1964

Appeal Dismissed

Irving C. Elliott has appealed to the Director from a decision of the Sacramento Land Office, dated February 14, 1964.

A statement of reasons for the appeal was received in this office but it was received late. Consequently, the appeal is subject to summary dismissal. 43 CFR 1840.0-7(a), 29 F.R. 4327, March 31, 1964 (formerly 43 CFR 221.98).

The appeals procedures provide that if the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed separately in the office of the Director, Bureau of Land Management, Washington, D. C. 20240, within 30 days after the notice of appeal was filed. 43 CFR 1842.5-1, 29 F.R. 4327 (formerly 43 CFR 221.3), unless the delay in filing is waived as provided in 43 CFR 1840.0-6(b), 29 F.R. 4326 (formerly 43 CFR 221.92).

The appellant's statement of reasons was filed in the Sacramento office of this Bureau on April 20, 1964, and forwarded on the same date to the office of the Director, where the filing was required. The statement was received here on April 22, 1964, within the 10-day grace period provided in 43 CFR 1840.0-6(b), supra; however, it was not transmitted to the proper office before April 17, 1964, the date of expiration of the period in which it was required to be filed. The grace rule is thus not applicable and the delay in filing cannot be waived.

The appeal is accordingly dismissed for failure to comply with the above requirements. We have enclosed Form 4-1364 which contains the cited regulations.

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SACRAMENTO LAND OFFICE

The appellant contends that as far as developing water on and agriculture use of the land, such would attract more wildlife and she [illegible] make it [illegible]ary. She asserts that the smallness of the area makes it unsuitable for recreational purposes. The appellant also claims that there is an abundance of fruits, grapes, and garden vegetables grown on ranches in the area and that the rough terrain shallow soils and altitude of the land are desirable rather than objectionable; and, she has been assured that there is an adequate underground water supply available.

The appellant, however, has not submitted any substantial or positive factual evidence to support her allegations, or a showing that the classification of the land as more suitable for grazing, wildlife habitat, and recreation than for agricultural development is in error. Therefore, the classification will not be disturbed. Cf. Lewis W. Shamel et al., A-28943 etc., (September 20, 1962).

Accordingly, the decision appealed from is affirmed.

Lillie Dale King is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240, and the [illegible] taking an appeal there must be in strict compliance with the regulations. If an appeal is filed the appellant will have the burden of showing by presenting positive and substantial evidence wherein the decision is in error,

Dale C. Immerman

Chief, Division of Appeals

DISTRIBUTION:
Lillie Dale King (Certified Mail)
Hon. Harry R. Sheppard, House of Representatives
Division of Lands and Recreation
Appeals list No. 1
RLE

DOCKET FILES

Irving C. Elliott is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840, 29 F.R. 4326, March 31, 1964 (formerly 43 CFR Part 221). See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

(Sgd.) Richard J. McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosures (2)

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1964 MAY 18 AM 10 00

DOCKET FILES

Enlarged Homestead: Generally 2211.6

It is proper to reject an application for an enlarged homestead entry where the lands applied for are marginal for agricultural purposes and do not contain sufficient tillable acreage to meet the requirements of an economic dry-farm unit.

Classification: Generally 2410

Lands cannot be classified as proper for enlarged homestead entry where soil conditions are poor and where, even though some agricultural production might be possible, it would be on such a small scale as to be economically infeasible to develop the lands for agricultural use.

Lloyd C. Northrup, Sacramento 075364 (November 2, 1964)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 NOV 9 AM 10 08

In reply refer to:
704
Sacramento 075364

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

November 2, 1964

Certified Mail
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DECISION

Lloyd C. Northrup : Application for Enlarged Homestead Entry

Decision Affirmed

Lloyd C. Northrup has appealed from a decision of the Bureau's Sacramento Land Office, dated August 31, 1964, rejecting his above-identified application for an enlarged homestead entry. The rejection was on the basis of a report of a field examination of subject lands which shows that they are submarginal for agricultural development because: (1) an estimated 230 of the 240 acres applied for contain soils which are shallow, infertile, have low organic content, and a small part is highly alkaline; (2) dry farming would not be practical because of the low water-holding capacity of the predominant soils, and irrigation would be extremely difficult and expensive because of the rolling character of the lands; and (3) the estimated cost of developing such poor quality lands would nearly equal the estimated income.

The appellant does not dispute the findings in the decision from which he has appealed. He asserts that he has cleared, prepared and farmed similar land since 1953. The appellant claims he is not looking for the best farm in the county, but he wants a home, and a homesteader who is doing all right on nearby land will give him a statement that the lands sought are farm lands, not all of them, but a sufficient amount to make it worth while. The appellant claims he could farm any 30 acres of subject lands to prove up on the homestead entry, thus putting the land on the tax rolls.

The Enlarged Homestead Act (43 U.S.C., 1958 ed., sec. 218), under which the appellant filed his application, provides that no lands shall be subject to entry under the provisions thereof until such lands shall have been designated by the Secretary of the Interior as not being, in his opinion, susceptible of successful irrigation at a reasonable cost from any known source of water supply. (Emphasis supplied). It is contemplated under the act and the regulations thereunder, 43 CFR 2211.6-1(2), that it will be necessary to resort to unusual methods of cultivation, such as the system commonly known as dry farming, and not irrigation, to produce agricultural crops on lands within allowed enlarged homestead entries. The fact that the land in question cannot be irrigated because of rough topography, as stated in the decision appealed from, cannot be considered as a reason for rejecting the enlarged homestead application, but only as a factor in determining whether or not the land shall be designated as subject to enlarged homestead entry. Nevertheless, the fact that the land cannot be irrigated is a further indication of its marginal character for agricultural development, and is a factor which would preclude development of the land under the other agricultural public land laws, such as the desert land law, or the ordinary homestead law in certain cases, which require reclamation of the land by irrigation.

It is well established that an application for enlarged homestead is properly rejected where the lands applied for are marginal for agricultural purposes and do not contain sufficient tillable acreage to meet the requirements of an economic dry-farm unit. Anderson O. Whitener, A-27626 (December 3, 1958); Jack Carson High, A-28593 (September 20, 1961); Joe L. Reed, A-28537 (February 9, 1962). Morever, the Department's present conservation program for the public lands provides in pertinent part that lands which are marginal for agriculture will not be classified for entry under the public land agricultural development laws.

The showing submitted by the appellant does not establish that the adverse classification of the lands is erroneous. Accordingly, the decision appealed from is affirmed.

Lloyd C. Northrop is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo

Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosure

DISTRIBUTION
Lloyd C. Northrup (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
RLE

DOCKET FILES

Classification: Procedures 2411

A petition-application for a homestead entry is not entitled to any administrative review other than provided for by the regulations in 43 CFR Part 2411, nor the right of appeal under the provisions of 43 CFR Parts 1840 and 1850. Where a petition-applicant has been allowed the right of appeal in a District Manager's decision, the decision appealed from will be vacated and the case remanded for appropriate processing under the provisions of 43 CFR 2411.

Robert D. Mabee, Riverside 05948 (March 22, 1965)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1965 APR 12 AM 10 00

In reply refer to:
704
Riverside 05948

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

March 22, 1965

DECISION

Robert D. Mabee : Homestead Petition-Application

Decision Vacated
Case Remanded

Mr. Robert D. Mabee has appealed from a decision of the Riverside District and Land Office, dated November 12, 1964, rejecting his above-identified homestead petition-application.

The filing and processing of petition-applications under the homestead law are governed by the regulations in 43 CFR Part 2411. Those regulations expressly provide that no petition-application shall be entitled to any administrative review other than provided in 43 CFR 2411, nor the right to appeal under the provisions of 43 CFR Parts 1840 and 1850, as was allowed incorrectly and improperly by the Riverside District and Land Office in the decision appealed from.

Moreover, subsequent to the filing of the appeal, a request has been received from the Riverside District Manager, that the subject petition-application be returned for further consideration because of certain changed conditions affecting the land involved.

Accordingly, the decision appealed from is vacated and the case is remanded to the Riverside District and Land Office for further appropriate processing under the provisions of 43 CFR 2411.

James F Doyle
Chief, Office of Appeals
and Hearings

DISTRIBUTION
Mr. Robert D. Mabee
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
RBO

appeal to Sec
A-31237

Patents of Public Lands: Generally 1862

Where no probative showing has been made that there was an error in the issued patent for the lands entered or intended to be entered, a petition to amend that patent is properly rejected.

Frank H. Stefflre and Claire E. Stefflre, Los Angeles 040819 (October 16, 1969)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 OCT 31 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

In reply refer to:
141
Los Angeles 040819

October 16, 1969
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RETURN RECEIPT REQUESTED

DECISION

Frank H. and Claire E. Stefflre : Amendment of Patent

Decision Affirmed

Frank H. and Claire E. Stefflre have appealed from a decision of the Riverside District and Land Office, dated May 6, 1969, rejecting their petition to amend homestead patent No. 1013117, issued on March 3, 1928, to George B. Means for 40 acres of land described as W½SW¼SE¼, E½SE¼W¼ Sec. 25, T. 12 S., R. 1 E. SBM. The petitioners, who are the present owners of the 40 acre tract patented to George Means, request that Means patent be amended to describe the S½SW¼, S½SE¼ Sec. 25, T. 12 S., R. 1 E., SBM, containing 160 acres.

The decision appealed from also states that:

> Applications for amendment of patents are considered under the regulations 43 CFR 1821.6 and R.S. 2372, as amended (43 USC 697) which authorize amendment of patents for the purpose of correcting errors pertaining to the description of the lands entered and intended to be entered.
>
> The records show that all of T. 12 S., R. 1 E., SBM, was temporarily withdrawn in 1906 for proposed San Diego Forest Reserve. By Presidential Proclamation of February 14, 1907, the land was formally withdrawn and included within the San Jacinto Forest Reserve (now Cleveland National Forest). The withdrawal precluded all forms of entry on any of the lands except under the mining laws unless and until restored to entry.
>
> The Secretary of the Interior restored 40 acres described as W½SW¼SE¼ and E½SE¼SW¼ sec. 25, T. 12 S., R. 1 E., SBM, in List 5-2921, on March 30, 1920. The records indicate this did not result from an application by any prospective applicant for such restoration.
>
> On July 17, 1925, nearly five years after the land was restored to homestead entry, George M. Means filed for and was allowed homestead entry Los Angeles 046819 on the land described in said List 5-2921. Subsequently, on March 3, 1928, patent No. 1013117 was issued to him

> therefor. Thus, there appears to be no question as to the area of land intended to be entered by Means. The only lands he could have entered were the 40 acres restored to homestead entry in 1920. As no error has been shown pertaining to the description of the lands in the Means patent there is no merit in a request for amendment of that patent. Accordingly, the petition is denied.
>
> The records of this office show that a homestead declaratory statement of J. M. Williams pertaining to S½SW¼, S½SE¼ sec. 25, containing 160 acres, T. 12 S., R. 1 E., SBM, was filed in July of 1888 but that a homestead entry was never made and completed by J. M. Williams. The records further show that a homestead embracing these same 160 acres was allowed to Sarah H. Williams on May 7, 1891, but that the entry was never completed and was cancelled by the Commissioner's letter "C" of February 25, 1907, thus terminating all rights under the homestead.

The appellants request on appeal that appropriate action be taken under 43 U.S.C. 182.6 "so that the land which they have been occupying since 1942 and their predecessors since the early 1880's would be clarified as being theirs". They also allege that the original Williams entry was not validly cancelled and therefor was not subject to withdrawal, and that Sarah Williams was entitled to receive a patent on March 7, 1893, or two years after she filed her final proof. Accordingly, appellants argue, Commissioner's letter "C" of February 25, 1907, purporting to cancel Sarah Williams entry 5964, was ineffective, as title had already vested. Appellants assert that for nearly 100 years people residing in the Ramona area have believed the occupants of the land in question to be the owners, and since they rely on the Williams' entry as well as the Means' patent, the action of the land office is violative of their constitutional right of due process. It is contended that Mr. Means' deed to appellant "misdescribes" the land in question, and further that the Means' patent should be amended to include the land entered by the Williams.

How Means acquired title to the additional land in the Williams' entry is not made clear by appellants.

The statement of reasons contains a chronology showing that J. M. Williams filed his declaratory statement and paid his fee in July 1888. He died in 1889. On May 7, 1891, Sarah Williams "utilizing the years of occupation of she and her husband, paid and filed for her patent. Receiver's Receipt #5064. (No copy available)." The statement of reasons also contains a copy of the appellants' petition which states, in part, that:

> Some time after making formal recordation of his entry, Mr. Williams passed away.
>
> Whether it was to complete her husband's entry and thereby perfect her title or to notify the Government that she

> had stayed on, Sara Williams paid the sum of Sixteen Dollars ($16.00) to the Federal Government on this same land on May 7, 1891. She thereafter continued to stay on at the family homestead.
>
> After Mrs. Williams' children passed away, she continued to live on the land past the turn of the century. The story is unclear at this point as to Mrs. Williams exact actions, but interviews and a review of the number of documents in petitioners possession indicate that Mrs. Williams transferred her rights to Mr. Herb Pile who continued to use a portion of the land and improve the homestead and in 1945 transferred his rights to Petitioner.

A photocopy of the serial page in the case record shows that J. M. Williams filed declaratory statement No. 5607 on July 7, 1888. There is no showing in the record that he had paid the initial fees and commissions of $16, therefore, it must be assumed that he did not pay such fees and commissions. Sarah N. Williams made homestead entry for the same 160 acres of land on May 7, 1891 and she paid the required $16 initial fee, case number 5964. Mrs. Williams' entry was cancelled by Commissioner's letter "C" on February 25, 1907.

Notwithstanding the appellants' insistance that Mr. and Mrs. Williams had planted crops on the entry, there is absolutely no proof in the record to that effect. Therefore, the inference that Mr. and Mrs. Williams had complied with the cultivation requirements of the homestead law is wholly unsupported. Even if Mrs. Williams were to be regarded as the heir or devisee of a deceased entryman, she was required to cultivate the land for the statutory period. Stewart v. Jacobs, 1 L.D. 636 (1878). The Department has also ruled that the failure to reside upon or cultivate the land operates as an abandonment of the entry. Richards v. Rasmussen, 17 L.D. 212 (1893). Also, the Department has ruled that the initial homestead entry is merely a declaration of intention to acquire title to the land by performing the conditions required by the homestead laws, and protects the entryman as against the intrusion of other settlers, but as against the government his right is only conditional and inchoate; and until proof has been submitted that he has fulfilled the conditions required by the homestead laws, and until the final certificate is issued, no rights vest in the claimant as against the government. Oscar O. Reeg, 40 L.D. 206 (1911). The Department has also held in Columbus C. Mabry (on rehearing), 48 L.D. 280 (1921) that a complete equitable title does not vest in a homestead entryman prior to the submission of a satisfactory final proof. An entryman was also required to pay the final fees and commissions before

a final certificate could properly issue. See Jacob Terrell, 49 L.D. 671 (1923). Consequently, notwithstanding the appellants' insistence to the contrary, there is no basis in fact for the assertion that Mrs. Williams had submitted her final proof or had otherwise complied with the requirements for patent. In these circumstances, it doesn't matter how much time has passed from the date of entry, Mrs. Williams never established any title or assignable interest in the land. Furthermore, if Mrs. Williams had disagreed with the commissioner's action cancelling her entry, the time to have objected was in 1907. Absent any protest or appeal that decision became final.

Even assuming, arguendo, that the Williams' entry was not properly cancelled, and assuming further that the decision cancelling the entry did not become final, there is still no basis for amending the Means patent to include the land entered by the Williams. Means' patent covered all of the land entered by him and all the land was open to entry at the time. There is nothing to suggest that the United States intended that he get more than the 40 acres entered, nor does anything suggest that Means himself expected more, as he received title to all that he applied for. No cogent argument has been advanced by the appellants to explain why Means should have been credited with earning title to the balance of the lands in the Williams' entry, although they request the patent be amended to show, in effect, that he did.

Finally, the 120 acres applied for were withdrawn from the public domain when the Williams' entry was cancelled on the records of the Bureau. These lands have continued to be withdrawn from entry. Departmental regulation 43 CFR 2214.1-1(b) and several departmental decisions, state unequivocally that an application under the color of title act cannot be allowed where the claim was not initiated until after the claimed land had been withdrawn for federal purposes. See Claude M. Williams, Jr. et al., A-29928 (March 26, 1964); Paul L. VanCleve Jr., The Van Cleve Company, A-28442 (January 12, 1961). Therefore, the suggestion that the appellants may have a basis for a color of title claim was mistaken.

The District and Land Office decision that no error has been shown in the Means patent is correct.

It may be appropriate to determine whether a trespass action should be commenced against the Steffires for unlawful occupancy of the withdrawn land.

The decision is affirmed.

Frank H. & Claire E. Steffire have the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. The appellant must show wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

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Appeals List No. 1